
TEXAS REGISTER

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School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for February 10, 2006

Appointed to the Texas State Library and Archives Commission for a term to expire September 28, 2011, Sally Ann Reynolds of Rockport (replacing Chris Brisack whose term expired).

Appointed to the Texas Board of Professional Engineers for a term to expire September 26, 2007, Daniel O. Wong of Sugar Land (replacing C. Roland Haden who resigned).

Appointed to the Texas Forensic Science Commission, pursuant to HB 1068, 79th Legislature, Regular Session, for a term to expire September 1, 2007, Sridhar Natarajan, M.D. of Lubbock.

Appointed to the Governor's Commission for Women, pursuant to Executive Order RP-3, for a term to expire December 31, 2007, Keely Appleton of Arlington.

Appointed to the Governor's Commission for Women, pursuant to Executive Order RP-3, for a term to expire December 31, 2007, Wendy Taylor Bengal of El Paso.

Appointed to the Governor's Commission for Women, pursuant to Executive Order RP-3, for a term to expire December 31, 2007, Suehing Yee Chiang of Sugar Land.

Appointed to the Governor's Commission for Women, pursuant to Executive Order RP-3, for a term to expire December 31, 2007, Cynthia Tyson Jenkins of Irving.

Appointed to the Governor's Commission for Women, pursuant to Executive Order RP-3, for a term to expire December 31, 2007, Christie McAdams Leedy, D.D.S. of Abilene.

Appointed to the Governor's Commission for Women, pursuant to Executive Order RP-3, for a term to expire December 31, 2007, Elisa Gonzales Lucero of Austin.

Appointed to the Governor's Commission for Women, pursuant to Executive Order RP-3, for a term to expire December 31, 2007, Becky Deyhle McKinley of Amarillo.

Appointed to the Governor's Commission for Women, pursuant to Executive Order RP-3, for a term to expire December 31, 2007, Peggy Thigpen Hairgrove of Haskell.

Appointed to the Governor's Commission for Women, pursuant to Executive Order RP-3, for a term to expire December 31, 2007, Maria Carmen Pagan of McAllen.

Appointed to the Governor's Commission for Women, pursuant to Executive Order RP-3, for a term to expire December 31, 2007, Carol Foxhall Peterson of Alpine.

Appointed to the Governor's Commission for Women, pursuant to Executive Order RP-3, for a term to expire December 31, 2007, Tresa Rockwell of El Paso.

Appointed to the Governor's Commission for Women, pursuant to Executive Order RP-3, for a term to expire December 31, 2007, Connie Weeks of Austin.

Appointed to the Governor's Commission for Women, pursuant to Executive Order RP-3, for a term to expire December 31, 2007, Daisy Sloan White of Houston.

Rick Perry, Governor

TRD-200600913



Executive Order

RP 55

Relating to renewal of disaster recovery issues.

WHEREAS, Hurricane Katrina, a disaster in sister states, created an emergency disaster and emergency conditions for the people in the State of Texas beginning September 1, 2005; and

WHEREAS, Hurricane Rita struck the State of Texas on September 24, 2005, causing massive destruction in South and East Texas; and

WHEREAS, Texas Railroad Commissioner Michael Williams, in his role as leading the state's long-term relief efforts in regards to Hurricanes Katrina and Rita, requested that I issue an executive order to further aid in the disaster recovery effort in order to continue to address the emergency conditions created by the disasters; and

WHEREAS, I did issue Executive Order No. 54 on January 10, 2006, relating to disaster recovery; and

WHEREAS, I do hereby certify that Hurricanes Katrina and Rita continue to create an emergency disaster and emergency conditions for the people in the State of Texas; and

WHEREAS, pursuant to the Texas Disaster Act of 1975, the governor is responsible for meeting the dangers to the state and people presented by disasters; and

WHEREAS, under Chapter 418 of the Texas Government Code, the governor is expressly authorized to issue executive orders declaring a state of disaster;

NOW THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew Executive Order No. 54 and declare a state of disaster for purposes of disaster recovery and response and direct that all necessary measures, both public and private as authorized under Section 418.015 of the Texas Government Code, be implemented to meet the disaster.

As provided in Section 418.016 of the Texas Government Code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

FURTHER, I hereby order that all actions taken pursuant to this executive order shall be preauthorized by the State Director of Homeland Security.

This executive order supersedes all previous orders in conflict or inconsistent with its terms and shall remain in effect and in full force until it expires by statute or it is modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 9th day of February, 2006.

Rick Perry, Governor
TRD-200600912



THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0438-GA

Requestor:

The Honorable Carole Keeton Strayhorn
Comptroller of Public Accounts
Post Office Box 13528
Austin, Texas 78711-3528

Re: Whether Federal Reserve notes constitute eligible collateral for repurchase agreement contracts under chapters 404 and 2256 of the Government Code: Clarification of Attorney General Opinion No. GA-0324 (2005) (RQ-0438-GA)

Briefs requested by March 18, 2006

RQ-0439-GA

Requestor:

The Honorable Jaime Esparza
District Attorney
34th Judicial District
El Paso County Courthouse
500 East San Antonio Street, 2nd Floor
El Paso, Texas 79901-2420

Re: Whether municipal police officers may set bail, and whether a sheriff may delay bringing an arrestee before a magistrate for 24 hours (misdemeanor) and 48 hours (felony) under the terms of the Code of Criminal Procedure (RQ-0439-GA)

Briefs requested by March 18, 2006

RQ-0440-GA

Requestor:

Mr. O. C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Post Office Box 12217
Austin, Texas 78711

Re: Applicability of chapter 711, Occupations Code, to a family cemetery (RQ-0440-GA)

Briefs requested by March 18, 2006

RQ-0441-GA

Requestor:

The Honorable Troy Fraser
Chair, Committee on Business and Commerce
Texas State Senate
Post Office Box 12068
Austin, Texas 78711

Re: Proper distribution of assets of a municipal utility district that has been dissolved (RQ-0441-GA)

Briefs requested by March 19, 2006

RQ-0442-GA

Requestor:

The Honorable Frank Madla
Chair, Committee on Intergovernmental Relations
Texas State Senate
Post Office Box 12068
Austin, Texas 78711

Re: Whether a municipality may designate an area as a "reinvestment zone" in which the financing plan does not include the issuance of bonds on notes (RQ-0442-GA)

Briefs requested by March 19, 2006

RQ-0443-GA

Requestor:

The Honorable John Smithee
Chair, Committee on Insurance
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Whether a commissioners court may call an election for a property tax freeze without receiving a voter petition (RQ-0443-GA)

Briefs requested by March 20, 2006

RQ-0444-GA

Requestor:

Mr. Carlos A. Pereda, Jr.
Maverick County Auditor
370 North Monroe Street, Suite 1
Eagle Pass, Texas 78852

Re: Payment of compensation to a sheriff and constable from grant funds after the beginning of a budget year (RQ-0444-GA)

Briefs requested by March 20, 2006

RQ-0445-GA

Requestor:

The Honorable Armando R. Villalobos
Cameron County District Attorney
Cameron County Courthouse
974 East Harrison
Brownsville, Texas 78520

Re: Whether health insurance and car allowances issued to municipal officials constitute a form of compensation (RQ-0445-GA)

Briefs requested by March 20, 2006

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200600952
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: February 22, 2006



Opinions

Opinion No. GA-0391

The Honorable Ismael "Kino" Flores
Chair, Committee on Licensing and Administrative Procedures
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910
Mr. Gordon E. Landreth, AIA
Chair, Texas Board of Architectural Examiners
Post Office Box 12337
Austin, Texas 78711-2337

Re: Whether a professional engineer may prepare all plans and specifications for a public building described in Occupations Code section 1051.703(a) without engaging the services of a licensed architect (RQ-0360-GA)

S U M M A R Y

Chapters 1001 and 1051 of the Occupations Code maintain the practice of engineering and the practice of architecture as distinct professions. These chapters recognize that the two professions overlap concerning building design, but they do not precisely define the overlap's boundaries. On one hand, the provisions in chapter 1051 are subject to an exception for engineers engaged in the practice of engineering as defined in chapter 1001. On the other hand, neither the statutes nor Attorney General Opinion DM-161 establish that engineering includes all aspects of building design.

Chapters 1001 and 1051 of the Occupations Code do not provide a basis to answer categorically whether an engineer may comprehensively design a building without the involvement of an architect, and to that extent the Board of Professional Engineers' policy advisory opinion regarding building design, dated June 1, 2005, is not correct. Rather, the answer to that question will depend on whether the adequate performance of the particular service or work requires a person with engineering education, training, and experience. Whether adequate performance of a particular service or work requires a person with engineering education, training, and experience is a question of fact that cannot be resolved in the opinion process.

Opinion No. GA-0392

Mr. James Chastain, President
Bandera County River Authority and Groundwater District
Post Office Box 177
202 Twelfth Street
Bandera, Texas 78003

Re: Qualifications for members of the board of the Bandera County River Authority and Groundwater District (RQ-0367-GA)

S U M M A R Y

Election Code section 141.001(a) states the qualifications for serving as director of the Bandera County River Authority and Groundwater District. To be qualified for serving as a director of the district, an individual must have resided continuously in the state for 12 months and in the district and the single member precinct he seeks to represent for six months immediately preceding the applicable date set out in the Election Code provision. He is not required to own taxable property within the district or single member precinct he seeks to represent.

Opinion No. GA-0393

The Honorable Robert Duncan
Chair, Committee on State Affairs
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Re: Whether a municipal chief of police may simultaneously serve as a trustee of an independent school district located within the geographical boundaries of the municipality (RQ-0368-GA)

S U M M A R Y

The Chief of Police of Hale Center, who serves at the pleasure of the Hale Center Board of Aldermen, is not prohibited by article XVI, section 40 of the Texas Constitution or the common-law doctrine of incompatibility from simultaneously serving as a member of the Board of Trustees of the Hale Center Independent School District.

Opinion No. GA-0394

The Honorable Dan W. Heard

Calhoun County Criminal District Attorney

Post Office Box 1001

Port Lavaca, Texas 77979

Re Whether a substitute teacher may receive compensation for serving as a member of a city council (RQ-0373-GA)

S U M M A R Y

A substitute teacher may receive compensation for serving as a member of a city council.

Opinion No. GA-0395

The Honorable Jim Pitts

Chair, Committee on Appropriations

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Raymund A. Paredes, Ph.D.

Commissioner of Higher Education

Texas Higher Education Coordinating Board

Post Office Box 12788

Austin, Texas 78711-2788

Re: Whether section 61.222 of the Education Code authorizes the Texas Higher Education Coordinating Board to approve for participation in the tuition equalization grant program a private or independent college or university that does not have the same accreditation as public institutions of higher education (RQ-0374-GA)

S U M M A R Y

Section 61.222 of the Education Code does not authorize the Higher Education Coordinating Board to approve for participation in the tuition equalization grant program a private or independent college or university that does not have the same accreditation as public institu-

tions of higher education. A college that is accredited by an entity that does not accredit public institutions of higher education does not meet the same accreditation as public institutions of higher education and the Coordinating Board is not authorized to approve such a college to participate in the program.

Opinion No. GA-0396

The Honorable Eddie Arredondo

Burnet County Attorney

Burnet County Courthouse

220 South Pierce

Burnet, Texas 78611

Re: Whether the state may continue to collect fines and court costs where no motion to adjudicate has been filed and the term of deferred adjudication has expired (RQ-0376-GA)

S U M M A R Y

Article 42.12, section 5(h) of the Code of Criminal Procedure authorizes a criminal court to exercise continuing jurisdiction over a defendant after the expiration of the community supervision period only in limited circumstances. Where no motion to adjudicate has been filed prior to the expiration of the community supervision period, article 42.12 does not authorize the state to pursue a defendant for past due fines and court costs with a *capias pro fine*.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200600937

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

Filed: February 22, 2006

◆ ◆ ◆

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 7. BANKING AND SECURITIES

PART 8. JOINT FINANCIAL REGULATORY AGENCIES

CHAPTER 153. HOME EQUITY LENDING

7 TAC §§153.13, 153.18, 153.20, 153.22

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of Consumer Credit Commissioner or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") jointly propose the repeal of §§153.13, 153.18, 153.20, and 153.22, relating to home equity lending under Texas Constitution, Article XVI, §50(a)(6). The commissions have proposed changes to these interpretations in the form of new interpretations; therefore, these interpretations are proposed for repeal and the new interpretations are proposed elsewhere in this issue of the *Texas Register*.

Harold Feeney, Credit Union commissioner, on behalf of the Texas Credit Union Commission and Leslie L. Pettijohn, Consumer Credit Commissioner, on behalf of the Finance Commission of Texas have determined that for the first five-year period the repeal as proposed will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the repeal.

Commissioner Feeney and Commissioner Pettijohn also have determined that for each year of the first five years the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal will be more logical interpretations for lenders and consumers. There is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the repeal as proposed.

Written comments on the proposed repeal may be submitted in to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to kerri.galvin@tcud.state.tx.us or sealy.hutchings@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed repeal is published in the *Texas Register*. At the conclusion of the 31st day after the proposed repeal is published in the *Texas Register*, no further written comments will be considered or accepted by the commissions.

The interpretation repeals are proposed pursuant to Texas Finance Code, §11.308 and §15.413 (as added by Acts 2003, 78th Legislature, Chapter 1207, §2), which separately and independently authorize each Commission to issue interpretations of the Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The Texas Constitution, Article XVI, §50(a)(6) is affected by the proposed interpretations.

§153.13. *Preclosing Disclosures: Section 50(a)(6)(M)(ii).*

§153.18. *Limitation on Application of Proceeds: Section 50(a)(6)(Q)(i).*

§153.20. *No Blanks in the Equity Loan Agreement: Section 50(a)(6)(Q)(iii).*

§153.22. *Copes of Documents: Section 50(a)(6)(Q)(v).*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 17, 2006.

TRD-200600864

Leslie L. Pettijohn

Commissioner

Joint Financial Regulatory Agencies

Earliest possible date of adoption: April 2, 2006

For further information, please call: (512) 936-7640



7 TAC §§153.13, 153.18, 153.20, 153.22

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") jointly propose new interpretations §§153.13, 153.18, 153.20 and 153.22, relating to home equity lending under Texas Constitution, Article XVI, §50(a)(6). Existing companion interpretations §§153.13, 153.18, 153.20 and 153.22 are proposed for repeal in this issue of the *Texas Register*.

Texas Constitution, Article XVI, Section 50 ("Section 50"), sets out the only permissible encumbrances on a homestead. Prior to 1998, Section 50 permitted liens on homestead property for the purposes of purchase money, taxes, an owelty of partition, the refinance of a lien, including tax liens, and home improvements. Effective January 1, 1998, Section 50 was amended to authorize home equity loans, permitting a home owner to obtain a loan secured by a lien on the homestead, without restricting how the owner can use the loan proceeds. Section 50 has since been amended in 1999, 2001, 2003, and 2005 to further address

aspects of home equity lending. Section 50 addresses only the elements necessary to create a valid lien on a homestead. Other statutes and constitutional provisions must also be consulted to fully evaluate the legality under Texas law of credit transactions involving the homestead.

The commissions are separately and independently charged with interpreting Sections 50(a)(5) - (7), (e) - (p), and (t) of the Constitution, see Texas Finance Code, §11.308 and §15.413, and Texas Constitution, Article XVI, Section 50(u). The commissions seek to jointly exercise their authority to interpret Section 50 in order to promote consistency and better support the confidence of homeowners and lenders transacting home equity loans in compliance with Section 50. In addition, the commissions interpret the extent of their interpretive authority to include not only determinations of the explicit meaning of words and terms in Section 50, but also to encompass "filling in the gaps" with respect to material matters that are inadequately addressed in Section 50, including possible addition of further details to the extent the commissions believe this to be necessary to fully implement the intent and purposes of Section 50.

Because of the significantly adverse consequences that can befall a lender who violates a provision of Section 50, clear and unambiguous guidance regarding the meaning of such provisions supports the stability of the credit markets. This stability benefits consumers by ensuring that home equity loans are as widely available to Texas homeowners as possible. Availability, certainty, and competition result in reducing the overall transaction cost to consumers for equity loans. To that end, the commissions have previously adopted interpretations codified to 7 TAC Chapters 151 and 153. These interpretations are intended to not only construe the actual language of the Constitution, but also to provide a practical framework for home equity lending that reflects the constitutional language and the intent of the legislature and the voters. The commissions interpret the Constitution in harmony with other statutes and provisions that govern loans and other credit transactions to ensure consistency in the application of law.

Concerns have been raised that several jointly adopted interpretations are potentially ambiguous. The commissions have determined to address these concerns, and therefore jointly propose to clarify these interpretations to better state the commissions' views.

Section 153.13

The Texas Constitution protects owners seeking home equity loans by requiring the lender to disclose to the owner all fees, costs, and charges associated with making the equity loan one day prior to closing. (Section 50(a)(6)(M)(ii)) The one-day notice avoids surprise to the owner at closing and allows the owner time to reassess the equity loan if the associated costs of the loan are higher than expected. The Constitution recognizes that there are instances where it may be appropriate to make an exception to the one-day waiting period between the disclosure of fees and the closing of the equity loan. In practice, lenders may experience difficulty in accurately predicting the exact amount of costs incurred in making an equity loan that are outside of the lender's control. For example property tax accruals are often disclosed imprecisely. Determining accurate accruals is further complicated when a closing date changes. For this reason the Constitution allows the owner to consent to a modified disclosure or receipt of a disclosure on the date of closing. This may occur if a bona fide emergency or other good cause exists and the

owner concludes that the best alternative is to waive the one-day waiting period.

The commissions interpreted Section 50(a)(6)(M)(ii) by adopting existing §153.13 to clarify the terms "bona fide emergency" and "other good cause" in a way that preserves the constitutional protections for the owner without subjecting the owner to unnecessary regulatory burdens. The commissions developed existing §153.13 in light of the existing Texas law that recognizes the principles of reasonableness, wisdom, and common sense.

Although the commissions believe the existing §153.13 is a valid and consistent interpretation of §50(a)(6)(M)(ii), concerns were raised that this interpretation could allow for a substantial increase in *total* closing costs if *each* fee increases by a small amount. Theoretical concerns were also raised that this interpretation could inadvertently allow for any fee to increase so long as one fee decreases. Following the case *In Re Box*, 342 B.R. 290 (Bankr. S.D. Tex. 2005) (holding that a signed document alone was not sufficient to evidence owner consent), lenders may need to further document an owner's consent. Therefore, the commissions propose to repeal the existing §153.13 and adopt a new §153.13.

Proposed §153.13 clarifies "bona fide emergency" and "other good cause" by setting out principles and examples for these terms. The commissions base the interpretation of the term "bona fide emergency" on the meaning and use of that phrase in 12 C.F.R. Part 226 (Regulation Z). Under this interpretation only a significant emergency qualifies as a bona fide emergency. The commissions base the definition of good cause on both the common meaning and the legal definition of that term; however, because the definition of this term could be construed broadly, the commissions offer additional guidance for owners and lenders under this standard. The examples provided to illustrate good cause are not intended to be exclusive. The commissions' interpretation offers a presumption that a de minimis increase in the costs, fees, and charges may qualify as good cause with the owner's consent. The commissions base this presumption on the doctrine of de minimis non curat lex -- the law does not concern itself with very small or trifling matters. The doctrine is well established in Texas law and has been applied in the context of consumer credit cases *Gawlik v. Padre Staples Auto Mart, Inc.*, 666 S.W.2d 161 (Tex. App. - Corpus Christi 1983, writ ref'd n.r.e.); *HSAM, Inc. v. Gatter*, 814 S.W.2d 887 (Tex. App. - San Antonio 1991, writ dismissed by agr.).

This doctrine protects the parties where the variance between the disclosures is minute. It seems unlikely that the law designed to protect an owner would *require* an owner to postpone a closing because of very small variances from previously disclosed costs, especially when the owner desires to proceed with closing. The commissions articulate the boundaries of the de minimis presumption in proposed §153.13. The interpretation is analogous to the standards of accuracy for disclosure in 12 C.F.R. §226.22(a)(2) (Regulation Z), which provides that the disclosed charges are treated as accurate if the amount "is not more than 1/8 of 1 percentage point above or below" the disclosed amount. In the proposed interpretation the de minimis threshold is set at 1/8 of 1 percent of the principal amount of the loan. On an equity loan with an \$80,000 principal amount, the 1/8 of 1 percent threshold would be \$100. Occasionally, unanticipated additional fees arise in an equity loan transaction shortly before closing. For example, the invoice for a courier or delivery fee may not arrive in time for the preclosing disclosure, and including the fee in the final documents could force a delay in closing

the equity loan. The proposed interpretation specifies that any unanticipated fee must be a third party fee to qualify under the de minimis good cause standard. If the difference between the anticipated third party fee and the higher actual fee falls within the de minimis good cause standard, then the owner may elect to proceed with closing the equity loan. This provision recognizes that postponing the date of closing may adversely affect the owner more than the amount of variance between disclosed and actual closing costs. It also allows the owner to decide if hardship would result from postponing the closing for de minimis variances in costs. Additionally, proposed §153.13 would allow the lender to reduce fees or closing costs by any amount without postponing the date of closing.

Proposed §153.13 also protects lenders and owners by offering additional guidelines to address the documentation that should be obtained to support an emergency or other good cause modification. The commissions intend the documentation requirement to ensure true informed consent on the part of the owner and that the standard of a bona fide emergency or other good cause has been met.

Section 153.18

Section 50(a)(6)(Q)(i) of the Constitution provides that an owner can not be required to apply the proceeds of an equity loan to repay another debt except debt secured by the homestead or debt to another lender. This provision is intended to prevent lenders from forcing or otherwise coercing owners to convert existing non-homestead debt to a home equity loan. Particularly concerning are cases where an owner is in default on a non-homestead debt and refinancing the debt into an equity loan secured by the homestead could ultimately result in the owner losing the homestead. The commissions' interpretation of the constitution in §153.18 recognizes the legislative intent to protect owners' interest in their homesteads.

The constitution, however, does not absolutely prohibit conversion of existing debt to debt secured by the homestead. There are instances where it may make sense for an owner to consolidate debt using an equity loan. For example, rates can be lower with an equity loan and the interest paid on an equity loan may be tax deductible. Owners who have a satisfactory relationship with a lender may also want to consolidate their debts into an equity loan with the lender with whom they already maintain an existing relationship.

The commissions adopted existing §153.18 to clarify this constitutional provision, focusing on the words "required" and "another lender." Section 153.18(1) acknowledges an owner's right to voluntarily pay off existing debt owed to the home equity lender. Section 153.18(3) takes this concept one step further, acknowledging that when an owner applies for a home equity debt consolidation loan with the existing lender, the owner makes a voluntary choice to use proceeds from that loan to pay off debt to the home equity lender. This interpretation neither conflicts with, nor modifies, the constitutional provision.

However, since the interpretation was promulgated, a Texas Bankruptcy Court has taken issue with subparagraph (3). In the case *In re Box*, 324 B. R. 290 (Bankr. S.D. Tex. 2005), the court found that where an owner signed an application for debt consolidation with a lender, allowing the payment of preexisting debt to that lender, the language in the credit application was not conclusive evidence that the owner's election was voluntary. The courts focused on whether an owner could truly choose to pay off existing debt to a lender because the lenders could

coerce or pressure the owner during the application or loan process. The court determined that standardized recitals could not conclusively evidence the voluntary intent. So, even though the owner appeared to voluntarily apply for a debt consolidation loan, the owner could actually have been required to apply the proceeds to existing debt as a condition of the loan and this is unconstitutional. The commissions agree that if the election by the owner to pay off preexisting debt to the lender making the home equity loan is truly not voluntary, then making the loan would create an unconstitutional and invalid lien.

Therefore the commissions propose to repeal the existing §153.18 and adopt a new §153.18. This new §153.18 removes the debt consolidation provision contained in the current version because, following the *In re Box* case, it adds no substantive value. Whether the action on the part of the owner is voluntary will be a question of fact every time, notwithstanding application or contractual provisions. The new rule also reverses the order of subparagraphs (1) and (2) of the current rule to better stress the importance of the lender prohibition and adds a sentence to subparagraph (2) clarifying that whether the act of the owner is voluntary is a question of fact.

Section 153.20

The commissions propose to clarify the interpretation of Section 50(a)(6)(Q)(iii) which provides that a home equity loan must be made on the condition that the owner not sign any instrument in which blanks are left to be filled in. The new interpretation defines the term "instrument," and revises the interpretation to more clearly identify what blanks constitute "blanks left to be filled in" as that phrase is used in the Constitution.

An instrument has been defined as "a formal legal document (as a deed, will, bond, lease, agreement, mortgage, note, power of attorney, ticket on carrier, bill of lading, insurance, policy, warrant, write) evidencing legal rights or duties especially of one party to another" (*See Webster's Third New International Dictionary, Unabridged*). Each of the documents cited in the definition creates or alters an obligation of a party. Therefore, for purposes of (a)(6)(Q)(iii), the term should be taken to mean a document that creates or alters an obligation of a party to an equity loan.

The commissions believe that if the Legislature had meant for all documents or records to be included, then the Legislature would have used the more generic term "document" as it did elsewhere in the Constitution (See for instance (a)(6)(Q)(v) which provides that the lender at the time of the extension of credit is made, must provide the owner of the homestead a copy of all *documents* signed by the owner related to the extension of credit).

In proposing the new interpretation, the commissions considered and gave weight to the usage of the term "instrument" employed by the Legislature in Finance Code §342.454 which defines the term "instrument" for purposes of the Code regulating certain consumer loans, including secondary mortgage loans on a consumer's homestead. In that section, the term "instrument" expressly includes a note, assignment, security agreement, or mortgage. Each of these documents is included within the scope of the *Webster's* definition, and each of these documents creates or alters a legal obligation. Thus, the commissions believe that the proposed interpretation is consistent with the traditional definition of the term and its historical usage by the Legislature in the context of creation of liens on homesteads.

In the proposed interpretation, the commissions give special consideration to the phrase "*blanks left to be filled in.*" The phrase, which qualifies the term "instrument," is deemed to

mean something more than the requirement that an owner not sign an instrument which contains blanks. If this were the intent, there would be no need to add the phrase "*left to be filled in.*" The proposed interpretation is consistent with Finance Code §342.506 which prohibits a lender from taking an instrument "in which a blank is left to be filled in after the loan is made." By giving appropriate attention to the phrase "*blanks left to be filled in,*" the proposed interpretation is consistent with the directive that in interpreting a constitutional provision one should avoid a construction which renders any provision meaningless or inoperative and must lean in favor of a construction which will render every word operative, rather than one which may make some words idle and nugatory. See *Hanson v. Jordan* 145 Tex. 320, 198 S.W. 2d 262 (1946).

Contemporary mortgage lending practices rely heavily on the use of preprinted or computer generated "standard forms." The use of these forms benefits consumers by lowering transaction costs and by providing uniformity of documentation with a company's portfolio and within the industry. Often these forms incorporate a menu of options for certain terms such as payment terms and interest rates, or optional insurance coverages. The selection of one of the options necessarily constitutes the rejection of the unselected option. In these instances, the unselected option will be left blank by design. For instance, some documents may provide that in a variable rate product, the customer may select a rate that adjusts monthly, quarterly, or yearly. The checking of a box to select a quarterly adjust period is a *de facto* rejection of the monthly option or the yearly option, and those boxes are left blank. In a similar context, an instrument may provide the consumer with the option to include credit life insurance. The consumer may initial one blank to accept this optional coverage or may initial the other blank to decline coverage. When the consumer initials the box declining coverage, the instrument should not be deemed to violate the constitution because the "acceptance" blank is left empty. If an unscrupulous lender subsequently altered the instrument, then the legal rules on alteration would protect the consumer. Additionally, because the lender is required to provide the consumer with a copy of all documents signed in connection with the equity loan under Section 50(a)(6)(Q)(v), the consumer would be able to document the consumer's choice and the subsequent alteration.

Section 153.22

Section 50(a)(6)(Q)(v) provides that, at the time the extension of credit is made, the lender must "provide the owner of the homestead a copy of all documents signed by the owner related to the extension of credit." Existing §153.22 interprets Section 50(a)(6)(Q)(v) by requiring the lender to provide the owner with copies of all documents that are signed at closing in connection with the equity loan, but not requiring the lender to provide the owner with copies of documents that were signed prior to closing.

Existing §153.22 was drafted to give meaning to the plain language of the constitution and to avoid unnecessary regulatory burden. By requiring the lender to provide the owner with copies of only those documents signed by the owner at closing, existing §153.22 assures that all of the copies the owner receives are of documents that are signed in the process of obtaining an equity loan, that are in the actual or constructive possession of the lender, and that are signed in direct relationship to the equity loan.

In adopting existing §153.22, the commissions placed greatest importance on assuring that the owner was fully informed. Sec-

ondarily, the commissions strove to reduce the number of irrelevant or marginally relevant documents the lender provides the owner at closing. Any information the owner might glean from copies of irrelevant or marginally relevant documents provided at closing, could be overshadowed by the confusion caused by adding more documents to the stack of documents the owner receives at closing. Additionally, the unnecessary regulatory burden of requiring the lender to provide these copies exceeds the benefit, if any, to the owner. The commissions believe that avoiding unnecessary regulatory burden and owner confusion is more important than requiring the lender to provide copies of irrelevant or marginally relevant owner-signed documents that do not create or alter an obligation of a party to the equity loan.

However, because existing §153.22 limits Section 50(a)(6)(Q)(v) to only those documents that are signed at closing, it may occasionally exclude a document that is signed by the owner in direct relation to the equity loan merely because it is signed prior to closing. The commissions determined that there is a way to rewrite existing §153.22 to exclude most or all irrelevant and marginally relevant owner-signed documents and include any directly related documents signed by the owner prior to closing. The commissions believe that proposed §153.22 accomplishes this while giving full effect to the intent of the drafters and voters.

Proposed §153.22 improves on existing §153.22 by requiring that a lender provide the owner with directly relevant documents signed by the owner whether signed at or prior to closing. Further, although different from the exclusion in existing §153.22, proposed §153.22 also contains an exclusion of irrelevant or marginally relevant documents signed by the owner. Specifically, proposed §153.22 requires a lender to provide the owner with all documents in the lender's actual or constructive possession, custody, or control that were signed by the owner as a condition to obtaining the equity loan; and were either: (1) intended for use in the process of evaluating and underwriting the equity loan; or (2) signed by the owner to create a legal obligation of the owner in favor of the originator or lender.

In some equity loan transactions, proposed §153.22 will encompass more owner-signed documents than existing §153.22, and one or more of these documents may already be in the owner's possession. However, the public benefit of requiring the lender to provide the owner with copies of all documents the owner signed directly related to the equity loan transaction outweighs any minimally increased regulatory burden on the lender or risk of further confusion of the owner caused by requiring the additional documents.

Existing §153.22 also addresses providing the owner with copies of documents signed by the owner after closing. Proposed §153.22 does not provide an interpretation regarding documents signed by the owner after closing because, although the commissions believe it is important for owners to have copies of any such documents (such as any document whereby the owner exercises the right of rescission), these documents are not addressed in Section 50(a)(6)(Q)(x)(d).

It is worth noting that Section 50(a)(6)(Q)(x)(d) provides that when an owner notifies a lender or holder that it failed to provide documents required by Section 50(a)(6)(Q)(v), the lender or holder has 60 days to correct the failure by delivering the documents to the owner. If a lender or holder does not deliver the documents within 60 days after such notice, the lender or holder forfeits all principal and interest of the equity loan.

Harold Feeney, Credit Union Commissioner, on behalf of the Texas Credit Union Commission and Leslie L. Pettijohn, Consumer Credit Commissioner, on behalf of the Finance Commission of Texas have determined that for the first five-year period the interpretations are in effect there will be no fiscal implications for state or local government as a result of administering the interpretations.

Commissioner Feeney and Commissioner Pettijohn also have determined that for each year of the first five years the interpretations as proposed are in effect, the public benefit anticipated as a result of the proposed interpretations will be to support the stability of the credit markets and ensure that equity loans are widely available to Texas homeowners, through the creation of reliable standards and guidelines.

There is no anticipated cost to persons who are required to comply with the interpretations as proposed. There will be no adverse economic effect on small or micro businesses.

Written comments on the proposed interpretations may be submitted to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to kerri.galvin@tcud.state.tx.us or sealy.hutchings@occc.state.tx.us. To be considered, a written comment must be received on or before the 40th day after the date the proposed sections (interpretations) are published in the *Texas Register*. At the conclusion of the 40th day after the proposed interpretations are published in the *Texas Register*, no further written comments will be considered or accepted by the commissions.

The Credit Union Commissioner and the Consumer Credit Commissioner have been delegated the authority to conduct a public meeting on behalf of the commissions for the purpose of receiving oral comments, views, and/or testimony concerning the proposed interpretations. A public meeting will be held in Austin on April 6, 2006, at 2:00 p.m. in the State Finance Commission Building, William F. Aldridge Hearing Room, located at 2601 North Lamar Boulevard. To be considered, an oral comment must be received at this public meeting; at the conclusion of the meeting, no further oral comments will be considered or accepted by the commissions.

Persons with disabilities who are planning to attend the meeting and have special communication or other accommodation needs should contact Joann McAnally at the Office of Consumer Credit Commissioner at (512) 936-7640. Requests should be made as far in advance of the meeting as possible.

The interpretations are proposed pursuant to Texas Finance Code, §11.308 and §15.413, which separately and independently authorize each commission to issue interpretations of the Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The Texas Constitution, Article XVI, §50(a)(6) is affected by the proposed interpretations.

§153.13. Preclosing Disclosures: Section 50(a)(6)(M)(ii).

An equity loan may not be closed before one business day after the date that the owner of the homestead receives a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide

the documentation to the owner or the lender may modify previously provided documentation on the date of closing.

(1) A lender may satisfy the disclosure requirement of this section by delivery to the borrower of a properly completed Department of Housing and Urban Development (HUD) disclosure Form HUD-1 or HUD-1A.

(2) Bona fide emergency.

(A) An owner may consent to receive the preclosing disclosure on the date of closing in the case of a bona fide emergency occurring before the date of the extension of credit. An equity loan secured by a homestead in an area designated by Federal Emergency Management Agency (FEMA) as a disaster area is an example of a bona fide emergency if the homestead was damaged during FEMA's declared incident period.

(B) To document an emergency modification, the lender should obtain a written statement from the owner that:

(i) describes the emergency;

(ii) specifically states that the owner consents to receive the preclosing disclosure on the date of closing;

(iii) bears the signature of all of the owners entitled to receive the preclosing disclosure; and

(iv) affirms the owner has received notice of their right to receive a final itemized disclosure containing all fees, costs, points, or charges one day prior to closing.

(3) Good cause.

(A) Good cause to modify the preclosing disclosure or to receive a subsequent disclosure on the date of closing may only be established by the owner.

(i) The term "good cause" as used in this section means a legitimate or justifiable reason, such as financial impact or an adverse consequence.

(ii) The term "de minimus" as used in this section means a very small or insignificant amount.

(B) At the owner's election, a de minimus good cause standard may be presumed if:

(i) the modification does not create a material adverse financial consequence to the owner;

(ii) a delay in the closing would create an adverse consequence to the owner;

(iii) the total actual disclosed fees, costs, points, and charges on the date of closing do not exceed in the aggregate more than 0.125 percent of the principal amount of the loan (e.g. 0.125 percent on a \$80,000 principal loan amount equals \$100) from the initial preclosing disclosure;

(iv) each itemized fee, cost, point, or charge does not exceed more than 0.125 percent of the principal amount of the loan than the amount disclosed in the initial preclosing disclosure; and

(v) either:

(I) the modification is necessary because of an accidental and bona fide error, such as a mathematical computation error, despite control systems that are in place to detect and prevent this type of error; or

(II) the modification is necessary because of an unanticipated additional fee, that is to be paid only to a third party and not to the lender or the mortgage originator.

(C) To document a good cause modification of the disclosure, the lender should obtain a written statement from the owner that:

(i) describes the good cause standard;

(ii) specifically states that the owner consents to receive the preclosing disclosure on the date of closing;

(iii) bears the signature of all of the owners entitled to receive the preclosing disclosure; and

(iv) affirms the owner has received notice of their right to receive a final itemized disclosure containing all fees, costs, points, or charges one day prior to closing.

(D) Nothing in this section precludes an owner from establishing good cause under independent facts that cause the owner material financial hardship or material adverse consequences if the equity loan were not allowed to close on the scheduled date of closing.

(4) An equity loan may be closed at any time during normal business hours on the next business day following the calendar day on which the owner receives the preclosing disclosure or any calendar day thereafter.

(5) The owner maintains the right of rescission under Section 50(a)(6)(Q)(viii) even if the owner exercises an emergency or good cause modification of the preclosing disclosure.

§153.18. Limitation on Application of Proceeds: Section 50(a)(6)(Q)(i).

An equity loan must be made on the condition that the owner of the homestead is not required to apply the proceeds of the extension of credit to repay another debt except debt secured by the homestead or debt to another lender.

(1) The lender may not require an owner to repay a debt owed to the lender, unless it is a debt secured by the homestead. The lender may require debt secured by the homestead or debt to another lender or creditor be paid out of the proceeds of an equity loan. The lender may not otherwise specify or restrict the use of the proceeds.

(2) An owner may use the proceeds of an equity loan for any purpose. An owner is not precluded from voluntarily using the proceeds of an equity loan to pay on a debt owed to the lender making the equity loan. If the owner uses proceeds from the equity loan to pay any amount on a debt to the lender making the equity loan, whether the payment was voluntary is a question of fact.

§153.20. No Blanks in Any Instrument: Section 50(a)(6)(Q)(iii).

(a) This Section of the Constitution prohibits the owner of the homestead from signing any instrument in which blanks are "left to be filled in". This Section is intended to prohibit a person other than the owner from completing one or more blanks in an instrument after the owner has signed the instrument and delivered it to the lender, thereby altering a party's obligation created in the instrument. Not all documents or records executed in connection with an equity loan are instruments, and not all blanks contained in an instrument are "blanks that are left to be filled in" as contemplated by this Section.

(b) As used in this Section, the term instrument means a document or record which creates a legal obligation of the owner in favor of an originator or lender. A disclosure required under state or federal law is not an instrument if the disclosure does not create or alter the obligation of a party.

(c) If at the time the owner signs an instrument, a blank is completed or box checked which indicates the owner's election to select one of multiple options offered (such as an election to select a fixed rate instead of an adjustable rate) and the owner therefore by implication has excluded the non-selected options, the instrument does not contain "blanks left to be filled in" when the non-selected option is left blank.

§153.22. Copies of Documents: Section 50(a)(6)(Q)(v).

The phrase "documents signed by the owner related to the extension of credit," as used in Section 50(a)(6)(Q)(v), means documents that are:

(1) in the lender's actual or constructive possession, custody, or control;

(2) signed by the owner as a condition to obtaining the equity loan; and

(3) intended either:

(A) for use in the process of evaluating and underwriting the equity loan; or

(B) to create a legal obligation of the owner in favor of the originator or lender.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 17, 2006.

TRD-200600863

Leslie L. Pettijohn

Commissioner

Joint Financial Regulatory Agencies

Proposed date of adoption: April 12, 2006

For further information, please call: (512) 936-7640



TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 1. LIBRARY DEVELOPMENT

SUBCHAPTER C. MINIMUM STANDARDS

FOR ACCREDITATION OF LIBRARIES IN THE STATE LIBRARY SYSTEM

13 TAC §1.77

The Texas State Library and Archives Commission proposes amended rule, 13 TAC §1.77, regarding the level of public library local government support needed for accreditation as a member of the Texas Library System.

Deborah Littrell, Library Development Division Director, has determined that for the first five years the section is in effect there will be no fiscal implications for state government as a result of enforcing or administering the proposed amended section. For the first five years the section is in effect there will be limited fiscal implications for local government as a result of enforcing or administering the proposed amended section. Local governments whose public library loses accreditation could lose ac-

cess to state library assistance programs including the privileges of Texas Library System membership, the Loan Star Libraries grant, and TexShare programs.

Ms. Littrell also has determined that for each of the first five years the proposed amended section is in effect the public benefits anticipated as a result of enforcing the proposed amended section will be to help public libraries sustain their local government support. There are no cost implications to either small or micro-businesses or individual persons required to comply with the proposed amended section.

Written comments on this proposal may be submitted to Deborah Littrell, Director, Library Development Division, Texas State Library and Archives Commission, Box 12927, Austin, Texas 78711-2927 or via fax (512-463-8800).

This amended section is proposed under the authority of Government Code §441.127, that provides the Commission authority to establish accreditation standards for system membership. The proposed amended section affects the Government Code, §441.127.

§1.77. Public Library: Local Government Support.

(a) At least half of the annual local operating expenditures required to meet the minimum level of per capita support for accreditation must be from local government sources. A public library that expends at least \$13.50 [\$10] per capita is exempt from this membership criterion if it shows evidence of some library expenditures from local government sources and is open to citizens under identical conditions without charge. Local government sources are defined as money appropriated by library taxing districts, by school districts, or by city or county governments from their general revenue moneys.

(b) If a currently accredited library is closed by action of its governing body, the commission, following a public hearing, may revoke that library's current membership in the state library system. This section will not apply if only the library building is temporarily closed because of natural or man-made disasters, or building construction, renovation, or maintenance. The library may be re-accredited as a member in the state library system during the next regular accreditation process, assuming that, by July 31, the library reports data showing that it currently meets all of the appropriate minimum requirements for membership in the state library system (as listed in §1.74 of this subchapter, related to Local Operating Expenditures; §1.75 of this subchapter, related to Nondiscrimination; §1.78 of this subchapter, related to County Librarian's Certificate; §1.81 of this subchapter, related to Quantitative Standards for Accreditation of Library; §1.83 of this subchapter, related to Other Requirements; and §1.84 of this subchapter, related to Professional Librarian).

(c) If a currently accredited library suffers a funding reduction that causes the library to reduce its hours, staffing, or budget below its appropriate minimum requirements for membership in the state library system (as listed in §1.81 of this subchapter, related to Quantitative Standards for Accreditation of Library), the commission, following a public hearing, may revoke that library's current membership in the state library system. The library may be re-accredited as a member in the state library system during the next regular accreditation process, assuming that, by July 31, the library reports data showing that it currently meets all of the appropriate minimum requirements for membership in the state library system (as listed in §1.74 of this subchapter, related to Local Operating Expenditures; §1.75 of this subchapter, related to Nondiscrimination; §1.78 of this subchapter, related to County Librarian's Certificate; §1.81 of this subchapter, related to Quantitative Standards for Accreditation of Library; §1.83 of this subchapter,

related to Other Requirements; and §1.84 of this subchapter, related to Professional Librarian).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200600854

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5459



CHAPTER 8. TEXSHARE LIBRARY CONSORTIUM

13 TAC §8.1, §8.5

The Texas State Library and Archives Commission proposes to amend 13 TAC §8.1 and §8.5 regarding the TexShare Library Consortium. The proposed revisions would establish criteria for public school libraries to participate in group purchasing agreements provided by the TexShare Consortium as specified in SB 483, enacted by the 79th Legislature. The proposed criteria would ensure that the resources of qualifying public school libraries are adequate for participation in these group purchasing programs, and that their participation will not have the effect of reducing services to current members. The standards for school library programs, 13 TAC §4.1, provide a complete set of standards and guidelines by which a school may examine the library program and begin to work toward results that are consistent with educational objectives.

Division Director Beverley Shirley has determined that for the first five years the section is in effect, state and local governments may experience cost savings in expenditures on electronic informational resources as a result of enforcing or administering the amended section, but the amount of that savings is indeterminable at this time.

Ms. Shirley also has determined that for each of the first five years the section is in effect, the public benefits anticipated as a result of enforcing the section will be to enhance the ability of public schools to further student achievement and lifelong learning. There are no cost implications to either small or micro-businesses or individual persons required to comply with the proposed amendments.

Written comments on the amendments may be sent to Beverley Shirley, Library Resource Sharing Division, Texas State Library and Archives Commission, Box 12927, Austin, Texas 78711-2927; fax: 512-936-2306.

The amendments are proposed under Government Code §441.225(b), which authorizes the commission to adopt rules to govern the operation of the consortium.

The amended section affects Government Code, §441.221 through §441.230.

§8.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Institution of higher education--An institution of higher education as defined by Education Code, §61.003, and a private or independent institution of higher education as defined by Education Code, §61.003.

(2) Annual Report--A report submitted to the Commission each year on the member institution of higher education's participation in TexShare programs, the member library of clinical medicine's participation in TexShare programs, or in fulfillment of a public library's system membership requirements.

(3) Commission--The Texas State Library and Archives Commission.

(4) Consortium--The TexShare Library Consortium.

(5) Director and Librarian--Chief executive and administrative officer of the commission.

(6) Public Library has the meaning assigned by Government Code, §441.122

(7) Library of clinical medicine has the meaning assigned to Non-Profit Corporation by Government Code, §441.221.

(A) Extensive library services are defined as those services set forth in §1.81(4)(C) and (D) of this title.

(B) Extensive collections in the fields of clinical medicine and the history of Medicine--a minimum of 10,000 library resources in print and in electronic format, comprised of books, journal titles, technical reports, and databases on clinical medicine and the history of medicine.

(8) Public school--any school accredited under Education Code Subchapter D. Accreditation Status (§§39.071-39.076).

(9) Public school library--an organized collection of printed, audiovisual and/or computer resources in a public school (elementary or secondary). A public school library makes resources and services available to all students, teachers, and administrators. Collections such as classroom "libraries" or collections of primarily textbooks or other similar classroom teaching materials are not public school libraries.

(10) Certified school librarian--a public school staff member holding a current school librarian certificate issued by the State Board for Educator Certification under the authority of Education Code, Chapter 21, Subchapter B (§§21.031-21.058).

(11) Certified staff member--a public school staff member holding a current certificate, license, permit, or other credential issued by the State Board for Educator Certification under the authority of Education Code, Chapter 21, Subchapter B (§§21.031-21.058).

(12) [(8)] Internet connection--A combination of hardware, software and telecommunications services that allows a computer to communicate with any other computer on the worldwide network of networks known as the Internet, and that adheres to Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and the Internet community.

§8.5. *Programs.*

(a) The programs of the consortium shall include activities designed to facilitate library resource sharing. Such activities may include:

(1) providing electronic networks, shared databases, reciprocal borrowing, delivery services, and other infrastructure necessary to enable the libraries in the consortium to share resources;

(2) negotiating and executing statewide contracts for information products and services;

(3) coordinating library planning, research and development; or

(4) training library personnel.

(b) Programs of the consortium are established and administered for the benefit of consortium members. Consortium members may sometimes enter into formal or informal agreements with non-member entities. Under these agreements, consortium members may not provide systematic access to consortium services to non-member entities. This provision should not be construed in such a way as to limit a member institution's ability to provide on-site access to TexShare databases to members of the public.

(c) Public school libraries may participate in group purchasing agreements provided by the consortium if such libraries are managed by or report to a certified school librarian or other certified staff member in the public school.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5459



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 17. CAMPUS PLANNING

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §17.3

The Texas Higher Education Coordinating Board proposes amendments to §17.3 concerning Definitions. Specifically, proposed §17.3 provides new definitions to reflect new guidelines regarding the Private Real Property Rights Preservation Act. The definitions are renumbered.

Ms. Susan Brown, Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Brown has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be to ensure compliance with the guidelines. There is no effect on small businesses.

There is no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lillian Wanjagi, Program Director, Office of Resource Planning, P.O. Box 12788, Austin, TX 78711; lillian.wanjagi@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules, and Texas Education Code, §61.058 and §61.0572.

The amendments affect the Texas Education Code, §61.058 and §61.0572.

§17.3. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (58) (No change.)

(59) Taking--Action that affects private real property, in whole or in part, temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the institution's action and that requires the institution to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or 19, Article 1, Texas Constitution, relating to taking, damaging, or destroying property for public use.

(60) Takings Impact Assessment (TIA)--Institutional report that describes the specific purpose of the taking of private real property and actions taken on behalf of the institution to determine whether reasonable alternative actions could be considered prior to engaging in the proposed action.

(61) [(59)] Technical Research Building--Space used for research, testing, and training in a mechanical or scientific field. Special equipment is required for staff and/or student experimentation or observation. Included are specialized laboratories for new technologies that have stringent environmental controls on air quality, temperature, vibration, and humidity. Facilities generally include space for specialized technologies, semiconductors, biotechnology, advanced materials, quantum computing and advanced manufacturing quantum computing technology, nanoscale measurement tools, integrated microchip-level technologies for measuring individual biological molecules, and experiments in nanoscale disciplines.

(62) [(60)] Tracking Report--Institutional reports indicating the status of approved projects.

(63) [(61)] Tuition Revenue Bonds Project--A project for which an institution has legislative authority to finance a construction or land acquisition project as provided for in Texas Education Code, §§55.01 - 55.25.

(64) [(62)] Unimproved Real Property--Real property on which there are no buildings or facilities.

(65) [(63)] University System--The association of one or more public senior colleges or universities, medical or dental units, or other agencies of higher education under the policy direction of a single governing board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



SUBCHAPTER C. RULES APPLYING TO ALL PROJECTS

19 TAC §17.21

The Texas Higher Education Coordinating Board proposes amendments to §17.21, concerning Application Procedures.

Specifically, proposed §17.21 requires that the Board of Regents Certification for a project application be dated no more than two years prior to the date the project application is submitted to the Coordinating Board for approval.

Ms. Susan Brown, Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Brown has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be to verify that the Board of Regents Certification is current. There is no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lillian Wanjagi, Program Director, Office of Resource Planning, P.O. Box 12788, Austin, TX 78711; lillian.wanjagi@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules, and Texas Education Code, §61.058 and §61.0572.

The amendments affect the Texas Education Code, §61.058 and §61.0572.

§17.21. Application Procedures.

(a) (No change.)

(b) Institutions shall submit the following materials for the consideration of projects by the Commissioner, Committee on Strategic Planning, or Board:

(1) (No change.)

(2) a signed Board of Regents Certification form certifying that the institution's Board of Regents has approved the project dated no more than two years prior to the date the project application is submitted to the Coordinating Board for approval and that the project meets the criteria specified in §17.20 of this title (relating to Criteria for Approval of Projects);

(3) - (4) (No change.)

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

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SUBCHAPTER F. RULES APPLYING TO REAL PROPERTY ACQUISITION PROJECTS

19 TAC §17.51, §17.52

The Texas Higher Education Coordinating Board proposes amendments to §17.51 concerning Additional Requirements and §17.52 concerning Eminent Domain. Specifically, proposed §17.51 provides new requirements to reflect new guidelines issued by the Office of the Attorney General regarding the Private Real Property Rights Preservation Act. Section 17.52 provides clarification of the rules regarding the credentials of an appraiser and any claim of confidentiality of an appraisal. The proposed amendment includes additional requirements for the Texas State Technical College System regarding project application for the acquisition of real property.

Ms. Susan Brown, Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Brown has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the section will be to ensure institutions are aware of the new guidelines and to provide clarification on the use of appraisals for real property acquisition. There is no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lillian Wanjagi, Program Director, Office of Resource Planning, P.O. Box 12788, Austin, TX 78711; lillian.wanjagi@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules, and Texas Education Code, §61.058 and §61.0572.

The amendments affect the Texas Education Code, §61.058 and §61.0572.

§17.51. Additional Requirements.

(a) Private Real Property Rights Preservation Act.

(1) The institution shall certify compliance with Chapter 2007 of the Government Code, and the Private Real Property Rights

Preservation Act Guidelines published in 30 TexReg 7911-7918, relating to the Private Real Property Rights Preservation Act, and

(2) A copy of the Takings Impact Assessment (TIA) shall be provided to the Board with the application for all real property purchases.

(3) The TIA shall include:

(A) The specific purpose of the proposed action;

(B) A determination as to whether engaging in the proposed purchase constitutes a taking;

(C) Whether and how the proposed action substantially advances its stated purpose and the burdens;

(D) The burdens imposed on private real property and the benefits to society resulting from the proposed use of private real property;

(E) A description of reasonable alternative actions that could accomplish the specified purpose

(F) A comparison, evaluation, and explanation of how an alternative action would further the specific purpose; and

(G) Whether an alternative action would constitute a taking;

(4) A takings impact assessment prepared under this section is public information.

(b) [(a)] Appraisals.

(1) If the cost of the real property is \$300,000 or more, an institution shall provide two current appraisal reports providing a current value of the property. The most recent appraisal of the local property tax appraisal district may be used for one of these reports.

(2) Appraisals shall be considered current if the appraisal was completed no more than two years prior to the date the project application is submitted to the Coordinating Board for approval.

(3) [(2)] If the cost of the real property is less than \$300,000, an institution shall submit a brief description of the information that it has relied upon to determine the current market value or provide an appraisal report estimating the current market value of the property.

(c) [(b)] Appraiser Credentials. Any appraisal report provided to the Board under this section shall certify that the appraiser(s) meets one of the following requirements:

(1) Is designated an Accredited Senior Appraiser by the American Society of Appraisers (A.S.A.) with the professional designation in real estate; or [Is a senior member of the Appraisal Institute (M.A.I., S.R.P.A. and S.R.A.);]

(2) Is a member of the Appraisal Institute designated M.A.I. by the Appraisal Institute and is experienced in the valuation and evaluation of commercial, industrial, residential, and other types of properties, and who advise clients on real estate investment decisions; [Is a senior member of the American Society of Appraisers with the professional designation in real estate; or]

(3) Is a member of the Appraisal Institute designated S.R.P.A. and is experienced in the valuation of commercial, industrial, residential, and other types of property; [Is a senior member or appraiser-counselor of the National Association of Independent Fee Appraisers (designated I.F.A.S. or I.F.A.C.);]

(4) Is a member of the Appraisal Institute designated S.R.A. and is a real estate solutions provider who is experienced in the analysis and valuation of residential real property;

(5) Is a senior member designated I.F.A.S by the National Association of Independent Fee Appraisers; or

(6) Is an appraiser-counselor designated I.F.A.C. by the National Association of Independent Fees Appraisers.

(d) [(e)]The requirement for appraisals in no way obligates the institution to release the figures to property owners during the acquisition process, nor does the requirement of appraisals deny the institution the right to settle a purchase at a price below the appraisals.

(1) An institution may place the word "Confidential" on each appraisal submitted to the Board under this section.

(2) The Board shall refer any public request for an appraisal that is marked "Confidential" or related project application materials to the Office of the Attorney General and provide notice to the institution that a request for the appraisal has been made under the Public Information Act found in Texas Government Code, Chapter 552.

(e) Special requirements for the Texas State Technical College System. Proposed real property acquisitions by the Texas State Technical College System in Cameron, Potter, Harrison, and Nolan Counties must be approved by the Office of the Governor after Board approval and prior to acquisition in compliance with Texas Education Code 135.02(c). The Board shall provide the Office of the Governor a copy of the approval letter and analysis. The System shall provide any additional documentation to the Office of the Governor. The System shall provide a copy of the Governor's approval to the Board for inclusion in the project application file within 30 days of the approval.

§17.52. Eminent Domain.

(a) Board approval for acquisitions in which eminent domain may be necessary shall be obtained prior to the commencement of eminent domain proceedings.

(b) The institution shall certify compliance with Chapter 2007 of the Government Code, and the Private Real Property Rights Preservation Act Guidelines published in 30 TexReg7911-7918, relating to the Private Real Property Rights Preservation Act,

(c) [(b)] The institution shall provide to the Board evidence of good faith efforts made to reach an agreement with the property's owner.

(d) [(e)] Upon resolution, the institution shall promptly report to the Board the costs associated with the eminent domain proceedings. Re-approval of the project by the Board shall not be necessary unless the court establishes a purchase price 10 percent higher than that approved by the Board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



SUBCHAPTER K. REPORTS

19 TAC §17.101

The Texas Higher Education Coordinating Board proposes amendments to §17.101, concerning Institutional Reports.

Specifically, proposed §17.101 increases the limits regarding submission of projects for an institution's Facilities Development Plan (MP1) to match new standards set by the Bond Review Board.

Ms. Susan Brown, Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Brown has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be to reduce the reporting burden on the institutions. There is no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lillian Wanjagi, Program Director, Office of Resource Planning, P.O. Box 12788, Austin, TX 78711; lillian.wanjagi@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules, and Texas Education Code, §61.0572.

The amendments affect the Texas Education Code, §61.0572.

§17.101. Institutional Reports.

Institutions of higher education shall submit current data to the Board for the following reports:

(1) (No change.)

(2) Facilities Development Reports. The Board shall consider projects that are included in the facilities development plans (MP1 and MP2). A project that is not included in the plan may be considered if the Board determines that the institution, even with careful planning, could not reasonably have foreseen the project need.

(A) Facilities Development Plan (MP1). On or before July 1 of every year, beginning in 2004, an institution shall submit an update to its Facilities Development Plan (MP1) on file with the Board, as required by Texas Education Code, §61.0582. In every even-numbered year, the Board shall provide Facilities Development Plan data to the Bond Review Board for inclusion in the Capital Expenditure Report. This report may include capital renewal and deferred maintenance projects. The data may be used by the Board to respond to legislative requests, predictions of future space need, and similar analyses. The report shall include projects that are planned or may be submitted to the Board within the next five years, regardless of funding source:

(i) [any proposed] new construction projects \$1,000,000 or more [greater than \$250,000],

(ii) repair and rehabilitation projects [greater than] \$1,000,000 or more;[-]

(iii) information resource projects that cumulatively would total [greater than] \$1,000,000 or more in one year;[- and]

(iv) property purchases that cumulatively would total \$1,000,000 or more in one year. (The actual property address or location for individual property acquisitions may be, but are not required to be, identified in a single proposed project entitled "property acquisitions" with a total cost of all purchases or acquisitions projected over the reporting period.) [for any amount that may be submitted within the next five years to the Board, regardless of funding source;]

(v) [(ii)] the funding source for any planned project identified in paragraph (2)(A)(i), (ii), (iii), and (iv) of this section; and

(vi) [(iii)] a description of the proposals the institution plans to submit to the Board during the reporting period [to finance with the Higher Education Assistance Fund or Permanent University Fund].

(B) - (C) (No change.)

(3) - (5) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER F. EDUCATION, EXPERIENCE, EDUCATIONAL PROGRAMS, TIME PERIODS AND TYPE OF LICENSE

22 TAC §535.64

The Texas Real Estate Commission (TREC) proposes amendments to §535.64, concerning Accreditation of Schools and Approval of Courses and Instructors. Section 535.64(g)(7) adopts by reference Form Ed 7-1 Instructor Manual Guidelines for Core Real Estate and Real Estate Related Courses. The amendments add to the rule a cite to the TREC's web site to download the form, and change the cites in the form to the relevant statutory provisions of Chapter 1101, Texas Occupations Code. The revisions also update the Instructor Manual for style and clarity and remove obsolete sections.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for the state as a result of enforcing or administering the amended section. There are no anticipated fiscal implications for units of local government. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the amended section.

Ms. DeHay also has determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the amended section will be clarification of the underlying statutory authority for the rule and increased readability. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purposed and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.64. *Accreditation of Schools and Approval of Courses and Instructors.*

(a) - (f) (No change.)

(g) Forms. The Texas Real Estate Commission adopts by reference the following forms approved by the commission. These documents are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(1) - (6) (No change.)

(7) Form ED 7-1 [7-0], Instructor Manual Guidelines.

(h) - (o) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Loretta R. DeHay

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 465-3900



SUBCHAPTER I. LICENSES

22 TAC §535.91, §535.92

The Texas Real Estate Commission (TREC) proposes amendments to §535.91, concerning Renewal Applications and §535.92, concerning Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements. The proposed amendments to §535.91 change the name of the "renewal application form" to "renewal notice" to make it clear that the commission will be notifying real estate salespersons and brokers of renewal requirements with a notice rather than with a form. The amendments to §535.91 also delete the subsection that adopts by reference the renewal application form as the

form will no longer be used to renew a license. Presently, licensees return the form to the commission with the required fee to renew a license. The commission will notify licensees with a postcard that contains substantially the same information that is currently on the renewal form.

Under the proposed amendments to §535.92 all licensees will be required to renew online at the commission's web site with an appropriate payment method. All information required of the licensee to renew the license may be entered online. Currently, licensees have the option of renewing online or by mail. If a licensee is unable to renew online, they can obtain a renewal form by contacting the commission and a form will be mailed to them or they will be given directions on how to download a form from the TREC's web site.

The commission will continue to notify licensees of the renewal requirements three months before the expiration of the current license. The commission will also continue to notify licensees subject to Mandatory Continuing Education (MCE) of the hours the licensee has completed and the hours that are required for an active renewal.

The commission is mandating online renewals to save costs associated with mailing renewal notices and to meet statewide performance measures associated with online renewals required of all similarly situated licensing agencies.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the proposed amendments to the sections are in effect there will be no fiscal implications for the state as a result of enforcing or administering the amended sections. There are no anticipated fiscal implications for units of local government. There will be no impact on small businesses, micro businesses or local or state employment as a result of implementing the amended sections.

Ms. DeHay also has determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the amended sections will be an easier renewal process for licensees and decreased costs to the agency associated with mailing renewal notices. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purposed and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.91. Renewal Notices [Applications].

(a) - (b) (No change.)

(c) The commission shall mail a renewal notice [~~application form~~] for an active broker or an inactive licensee to the last known permanent mailing address of the broker or licensee as shown in the commission's computerized records. The commission shall mail a renewal

notice [~~application form~~] for an active salesperson to the permanent mailing address of the salesperson's sponsoring broker. The commission shall mail the notice [~~form~~] three months before the expiration of the current license. Each licensee shall furnish a permanent mailing address to the commission and report all subsequent address changes within 10 days after a change of address. If a licensee fails to provide a permanent mailing address, the last known mailing address provided by the licensee will be deemed to be the licensee's permanent mailing address. [~~Applications must be made on the current renewal application form approved by the commission accompanied by the required fee.~~] Failure to receive a license renewal notice [~~application form~~] does not relieve a licensee of the obligation to renew [~~obtain the appropriate form and to apply for renewal of~~] a license. A licensee shall provide information requested by the commission in connection with an application to renew a license within 30 days after the commission requests the information. Failure to provide information requested by the commission in connection with a renewal application within the required time is grounds for disciplinary action under the Act, §1101.656.

{(d) The Texas Real Estate Commission adopts by reference Renewal Application Forms SR 1-0 and BR 1-0, approved by the commission in 2004. These forms are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.}

§535.92. Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements.

(a) - (b) (No change.)

(c) The commission shall advise each licensee of the time period for filing a renewal application and paying the renewal fee by mailing an appropriate notice to the licensee as prescribed by §535.91 of this chapter (relating to Renewal Notices [~~Applications~~]). If the licensee is subject to mandatory continuing education (MCE) requirements, the notice must also contain the number of MCE hours for which the licensee has been given credit and the number of additional MCE hours required for renewal of the license. The commission shall have no obligation to so notify an inactive licensee who has failed to furnish the commission with the person's permanent mailing address or a corporation, limited liability company or partnership that has failed to designate an officer, manager or partner who meets the requirements of the Real Estate License Act (the Act).

(d) A licensee shall [~~may~~] renew an unexpired license by accessing the commission's Internet web site, entering the required information on the renewal application form, satisfying applicable education requirements and paying the appropriate fee in accordance with the instructions provided at the site by the commission.

(e) - (k) (No change.)

(l) If a licensee is unable to renew a license on the commission's Internet website, the licensee may renew an unexpired license by obtaining a renewal application form from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 and complying with the requirements of this section and §535.91 of this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2006.

TRD-200600815

Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: April 2, 2006
For further information, please call: (512) 465-3900

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SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE

22 TAC §535.144

The Texas Real Estate Commission (TREC) proposes amendments to §535.144, concerning *When Acquiring or Disposing of Own Property*. The amendments are proposed to implement revisions to Texas Occupations Code Chapter 1101 enacted during the 79th Legislative Session, Regular Session, by Senate Bill 810 (2005).

In part, Senate Bill 810 revised §1101.652(a)(3), Texas Occupations Code, to authorize the commission to take disciplinary action against a licensee if the licensee engages in misrepresentation or fraud when selling, buying, trading or leasing real property in the name of the license holder's spouse or a person related to the license holder within the first degree by consanguinity. Prior to September 1, 2005, §1101.652(a)(3) applied only when a license holder engaged in misrepresentation or fraud when acting in his or her own name. Section 535.144, which is based on §1101.652(a)(3), requires a licensee to disclose in writing that he or she is a real estate salesperson or broker acting on his or her own behalf. The amendment to §535.144 would define "first degree of consanguinity" to mean a child or parent of the licensee; and would require a similar written disclosure when a licensee buys, sells, trades or leases real property in the name of the licensee's spouse, child or parent.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for the state as a result of enforcing or administering the amended section. There are no anticipated fiscal implications for units of local government. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the amended section.

Ms. DeHay also has determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the amended section will be clarity in the implementation of the statutory provisions regarding the commission's authority to take disciplinary action against a licensee who fails to disclose his or her license status under limited circumstances. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101 and Senate Bill 810, 79th Legislature, Regular

Session (2005). No other statute, code or article is affected by the proposed amendments.

§535.144. When Acquiring or Disposing of Own Property or Property of Spouse, Parent or Child.

(a) For purposes of §1101.652(a)(3), Texas Occupations Code, "a person related to the license holder within the first degree by consanguinity" means a license holder's parent or child.

(b) A licensee, when engaging in a real estate transaction on his or her own behalf, [or] on behalf of a business entity in which the licensee is more than a 10% owner, or on behalf of the licensee's spouse, parent, or child, is obligated to inform any person with whom the licensee deals that he or she is a licensed real estate broker or salesperson acting on his or her own behalf or on behalf of the licensee's spouse, parent, or child either by disclosure in any contract of sale or rental agreement, or by disclosure in any other writing given prior to entering into any contract of sales or rental agreement. A licensee shall not use the licensee's expertise to the disadvantage of a person with whom the licensee deals.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2006.

TRD-200600816
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: April 2, 2006
For further information, please call: (512) 465-3900

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.210

The Texas Real Estate Commission (TREC) proposes an amendment to §535.210, concerning Fees. The amendment is proposed to implement revisions to Texas Occupations Code Chapter 1102 enacted during the 79th Legislative Session, Regular Session (2005), by Senate Bill 810. Chapter 1102 was revised to required licensing and renewal of corporations and limited liability companies that engage in professional home inspecting for buyers and sellers in Texas.

The proposed amendment to §535.210 adds a \$5 fee to be charged to corporations and limited liability companies licensed as Texas professional inspectors for the annual renewal of the license. Given that the home inspector license renewal period will change to a 2-year cycle in April, 2006, the total amount due for each renewal would be \$10 to parallel an existing \$10 application fee for those business entity licenses.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for the state as a result of enforcing or administering the amended section. There are no anticipated fiscal implications for units of local government. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the amended section except to the extent that a licensed corporation or limited liability

company that engages in professional home inspecting for buyers and sellers in Texas would be required to pay the \$10 fee every two years to renew its professional inspector license.

Ms. DeHay also has determined that for each year of the first five years the amendment as proposed is in effect the public benefit anticipated as a result of enforcing the amended section will be clarity in the implementation of the statutory requirements for licensing and renewal, and to assist interested person in the application process. The anticipated economic cost to persons who are required to comply with the proposed amendment is the \$10 fee every two years to renew a license.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102 and Senate Bill 810, 79th Legislature, Regular Session. No other statute, code or article is affected by the proposed amendment.

§535.210. Fees.

(a) The commission shall charge and collect the following fees:

(1) - (9) (No change.)

(10) a fee of \$5 for the annual renewal of the license of a professional inspector by a corporation or limited liability company;

(11) ~~[(10)]~~ a fee of \$20 for requesting issuance of a license because of a change of name, return to active status, or change in sponsoring professional inspector; and

(12) ~~[(11)]~~ a fee of \$100 for deposit in the real estate inspection recovery fund upon an applicant's successful completion of an examination. This fee does not apply to application for a license as a professional inspector by a corporation or limited liability company.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2006.

TRD-200600817

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: April 2, 2006

For further information, please call: (512) 465-3900



CHAPTER 539. PROVISIONS OF THE
RESIDENTIAL SERVICE COMPANY ACT
SUBCHAPTER H. MISCELLANEOUS FORMS

22 TAC §539.71

The Texas Real Estate Commission (TREC) proposes amendments to §539.71, concerning Miscellaneous Forms. The amendment changes the cites in Form RSC 2-3, Residential Service Company Bond to the relevant statutory provisions in Chapter 1303, Texas Occupations Code. House Bill 2813, 77th Legislature (2001), added Chapter 1303, a nonsubstantive codification of The Residential Service Company Act, and repealed Article 6573b, Texas Civil Statutes effective June 1, 2003.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for the state as a result of enforcing or administering the amended section. There are no anticipated fiscal implications for units of local government. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the amended section.

Ms. DeHay also has determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the amended section will be clarification of the underlying statutory authority for the rule. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

§539.71. Miscellaneous Forms.

The Texas Real Estate Commission adopts by reference the following forms approved by the commission ~~[in 2004]~~. These forms are published and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(1) Residential Service Company Bond, Form RSC 2-3 ~~[2-2]~~; and

(2) Application to Approve Evidence of Coverage/Schedule of Charges, Form RSC 3-1.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2006.

TRD-200600818

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: April 2, 2006

For further information, please call: (512) 465-3900



PART 29. TEXAS BOARD OF
PROFESSIONAL LAND SURVEYING

CHAPTER 661. GENERAL RULES OF
PROCEDURES AND PRACTICES
SUBCHAPTER D. APPLICATIONS,
EXAMINATIONS, AND LICENSING

22 TAC §661.55

The Texas Board of Professional Land Surveying (TBPLS) proposes a new rule §661.55, concerning Surveying Firms. This rule will establish the responsibility of firms offering land surveying services. It is proposed under authority of the Professional Land Surveying Practices Act, Section 1071.151 related to rule making, Section 1071.251 relating to registration, license or certification required, Section 1071.352 regarding surveying by a business entity and Section 1071.353 relating to Practice Under Assumed Name.

The new rule will clarify Section 1071.352 and 1071.353 regarding the responsibility of firms offering land surveying services.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this new rule.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will clarify the responsibility for firms offering land surveying services.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the new rule may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A - Suite 156, Austin, TX 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to sandy.smith@mail.capnet.state.tx.us. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The new rule is proposed pursuant to Section 1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The new rule implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

§661.55. Surveying Firms.

(a) An association, partnership, or corporation offering surveying services shall file with the Board, on a form furnished by the Board:

(1) the business and legal names and addresses of the association, partnership, or corporation;

(2) the name of the owner or manager of the association, partnership, or corporation; and

(3) the names and license numbers of all persons registered or licensed under this Act employed by the association, partnership, or corporation.

(b) A person registered or licensed under the Act shall ensure that any association, partnership, or corporation employing them complies with the filing requirements set forth in subsection (a) of this section.

(c) A person registered or licensed under the Act and employed by an association, partnership, or corporation shall notify the Board in writing within five (5) business days prior to leaving employment or no later than 24 hours after leaving employment.

(d) The Board may refer to the Texas Attorney General for appropriate action any person registered or licensed under the Act or any association, partnership, or corporation offering surveying services that fails to comply with this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 17, 2006.

TRD-200600860

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: April 2, 2006

For further information, please call: (512) 452-9427



TITLE 25. HEALTH SERVICES

**PART 1. DEPARTMENT OF STATE
HEALTH SERVICES**

**CHAPTER 1. TEXAS BOARD OF HEALTH
SUBCHAPTER A. PROCEDURES AND
POLICIES**

25 TAC §§1.1, 1.3 - 1.8

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§1.1 and 1.3 - 1.8, concerning procedures and policies of the Texas Board of Health (board).

BACKGROUND AND PURPOSE

The repeal is necessary to comply with Acts 2003, 78th Legislature, Regular Session, Chapter 198 (House Bill 2292), §§1.18 and 1.26, which abolished the Texas Department of Health and the board, effective September 1, 2004. Repeal of these sections is necessary to align the department's rules more accurately with House Bill 2292. The rules and this Proposed Preamble were previously published as proposed in the *Texas Register* but expired on November 10, 2005, before final adoption and publication occurred. The department now is taking the rules through the rulemaking process again.

SECTION-BY-SECTION SUMMARY

The repeal of §§1.1 and 1.3 - 1.8 is necessary to align the department's rules with the requirements of House Bill 2292 now that the board no longer exists. As part of the repeal of those sections, §1.7(b)(4), concerning the commissioner of health's (now the commissioner of the department, pursuant to House Bill 2292) authority to execute contracts and delegate execution of contracts of greater than \$1 million, is unnecessary as a rule because contract execution authority is now under the department's policies and is not required to be stated in a rule.

FISCAL NOTE

Cathy B. Campbell, General Counsel, Office of General Counsel, has determined that for each year of the first five-year period that the repeals will be in effect, there will be no fiscal implications to state or local government as a result of repealing the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Campbell has also determined that there are no anticipated economic costs to small businesses, micro-businesses or persons because the rules are no longer necessary, and business practices will not be altered in order to comply with the proposed repeal of the sections. There will be no impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Campbell has also determined that for each year of the first five years the repeal of the sections is in effect, the public benefit anticipated as a result of the repeal is to eliminate possible confusion caused by reference to the board and the board's policies and procedures, which no longer exist.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeals do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Sara Richardson, Legal Assistant, Office of General Counsel, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111, extension 6961. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

The proposed repeals are authorized by Acts 2003, 78th Legislature, Regular Session, Chapter 198 (House Bill 2292),

§§1.18 and 1.26, which abolished the Texas Department of Health and its governing board, the Texas Board of Health, effective September 1, 2004; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies reasonably necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeals affect the Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§1.1. Purpose.

§1.3. Organization of the Board of Health.

§1.4. General Powers and Duties of the Board of Health.

§1.5. Meetings of the Board of Health.

§1.6. Actions Requiring Board Approval.

§1.7. Commissioner of Health.

§1.8. Press and Public Relations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 17, 2006.

TRD-200600857

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: April 2, 2006

For further information, please call: (512) 458-7111 x6972



CHAPTER 97. COMMUNICABLE DISEASES

SUBCHAPTER I. IMMUNIZATION

REQUIREMENTS FOR RESIDENTS OF TEXAS

NURSING HOMES

25 TAC §97.201, §97.202

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §97.201 and §97.202, concerning the immunizations nursing homes are required to offer in accordance with the most recent recommendations of the Advisory Committee on Immunization Practices (ACIP) and the requirement to document the receipt or refusal of the vaccinations.

BACKGROUND AND PURPOSE

The proposed amendments provide the ACIP recommendations as an immunization reference for nursing homes, clarify language, and expand the mandatory time to provide influenza vaccine for employees hired or residents admitted after November 30 of each year from "through February of each year" to "through March of each year". This change will make these rules consistent with proposed Centers for Medicare and Medicaid Services

(CMS) nursing homes regulations and is also in accordance with the most recent recommendation of the ACIP.

The department consulted with the Department of Aging and Disability, CMS, Department of State Health Services Division for Regulatory Services, ARC of Texas, Texas Association of Residential Care Communities, Texas Health Care Association, Texas Organization of Residential Care Homes, Texas Advocates for Nursing Homes, and the Texas Association of Area Agencies on Aging.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 97.201 and 97.202 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

A grammatical change was made to the amendment to §97.201, replacing the words "which serve" with the word "serving". Amendment to §97.202 provides the ACIP recommendations as an immunization reference for nursing homes, and expands the mandatory time to provide influenza vaccine for employees hired or residents admitted after November 30 of each year from "through February of each year" to "through March of each year".

FISCAL NOTE

Casey S. Blass, Section Director, Disease Prevention and Intervention Section, has determined that for each year of the first five years that the sections will be in effect there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Blass has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Mr. Blass has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to increase the accuracy of the sections involved in this proposal and to provide additional time to offer vaccines.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to

protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Victoria Brice, Disease Prevention and Intervention Section, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111, extension 6658, or (800) 252-9152. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposal has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendments are proposed under Health and Safety Code, §81.021, which requires the department to develop immunization requirements; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendments affect Health and Safety Code, Chapters 81 and 1001; and Government Code, Chapter 531. The review of the rules implements Government Code, §2001.039.

§97.201. Facilities Included in Requirements.

These requirements apply to nursing homes that are licensed institutions serving [which serve] residents who are elderly persons as defined by the Health and Safety Code, §242.002.

§97.202. Required Immunizations.

(a) Nursing homes are required to offer immunizations in accordance with the most recent recommendations of the Advisory Committee on Immunization Practices (ACIP). [an immunization schedule adopted by the Texas Department of Health.]

(1) Pneumococcal vaccine for residents. The facility must offer pneumococcal vaccination to all residents 65 years of age or older who have not received this immunization and to residents younger than 65 years of age who have not received this vaccine but are candidates for vaccination because of chronic illness. Pneumococcal vaccine must be offered both to residents who currently reside in the facility and to new residents upon admission. Vaccination must be completed unless the vaccine is medically contraindicated by a physician or the resident refuses the vaccine. Vaccine administration must be in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention at the time of the vaccination.

(2) Influenza vaccine [vaccinations] for residents and employees. The facility must offer influenza vaccination to residents and employees in contact with residents. Vaccination must be completed

unless the vaccine is medically contraindicated by a physician or unless the employee or resident has refused the vaccine.

(A) Influenza vaccination for all residents and employees must be completed by November 30 of each year. Employees hired or residents admitted after this date and during the influenza season (through March ~~February~~ of each year) must receive influenza vaccinations unless medically contraindicated by a physician or unless the employee or resident has refused the vaccine.

(B) Vaccine administration must be in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention at the time of the most recent vaccination.

(b) Documentation of receipt or refusal of vaccinations. Immunization records will be maintained for each employee in contact with residents and will show the date of the receipt or refusal of each annual influenza vaccination. The medical record for each resident will show the date of the receipt or refusal of the pneumococcal and the annual influenza ~~[vaccination and the pneumococcal]~~ vaccines ~~[vaccine]~~.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 17, 2006.

TRD-200600856

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: April 2, 2006

For further information, please call: (512) 458-7111 x6972



CHAPTER 128. PERMITS FOR CONTACT LENS DISPENSERS

25 TAC §§128.1 - 128.5, 128.9, 128.14

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§128.1 - 128.5, 128.9, and 128.14, concerning the permitting and regulation of contact lens dispensers.

BACKGROUND AND PURPOSE

The Texas Legislature passed House Bill (HB) 1025, 79th Legislature, Regular Session (2005), Sunset legislation, located in Occupations Code, Chapter 351, relating to the continuation and functions of the Texas Optometry Board, with conforming amendments to the Texas Contact Lens Prescription Act as required by the federal "Fairness to Contact Lens Consumers Act" (Public Law 108-164), and federal rules implementing the law, 16 CFR Part 315 (Contact Lens Rule); HB 2680, 79th Legislature, Regular Session (2005), located in Occupations Code, Chapter 112, relating to reduced fees and continuing education requirements for retired health professionals, including contact lens permit holders, engaged in the provision of voluntary charity care; and HB 164, 79th Legislature, Regular Session (2005), relating to amendments to the Health and Safety Code (HSC), Chapter 431, including prohibiting the sale of prescription devices, including contact lenses, at a flea market. The

amendments also implement HSC, §12.0111, which requires the department to charge fees for issuing or renewing a license.

SECTION-BY-SECTION SUMMARY

Amendments to §128.1 reflect the new section name for §128.5, and include a prescription verification requirement. Amendments to §128.2 reflect changes required by the abolishment of the "Board of Health"; and the addition of "Executive Commissioner". The section has been renumbered to reflect deletions and insertions. Amendments to §128.3 reflect the new reduced fee for renewal for a retired contact lens dispenser providing voluntary charity care required by HB 2680 of \$50 (for a retired optician registered with the department) and \$75 (for a retired optician not registered with the department) for each two-year renewal. Amendments to §128.4 remove obsolete language related to the abolished Board of Health. Amendments to §128.5 require that a record of a prescription or prescription verification be retained for a period of two years, and include the new requirement in federal and state law for prescription verification, including standards for verification. The section also authorizes the executive commissioner of HHSC and the executive director of the Texas Optometry Board to enter into interagency agreements as necessary to enforce the rules. The section also reflects the prohibition on the sale of contact lenses at a flea market. The name of the section is amended to reflect the standards for verification. Amendments to §128.9 reflect the renewal requirements for a retired contact lens dispenser providing voluntary charity care required by HB 2680. An amendment to §128.14 reflects a name change from "Division" to "Unit" necessitated by reorganization with the department.

FISCAL NOTE

Kathy Perkins, Director, Health Care Quality Section, has determined that for each year of the first five years the sections are in effect, there will be minimal fiscal implications to state or local government as a result of enforcing or administering the sections as proposed. The impact of the possible decrease in renewal fees collected due to the implementation of reduced renewal fees for retired contact lens dispensers over the age of 55 providing voluntary charity care is insignificant due to the small population of retired contact lens dispensers anticipated to provide charity care services.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Perkins has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This determination was made because the amendments implement Federal laws which are already in effect. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Perkins has also determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the permitting and regulation of contact lens dispensers.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a

rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Yvonne Feinleib, Program Director, Contact Lens Dispensing Permit Program, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/834-4521 or by email to Yvonne.Feinleib@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendments are authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendments affect the Occupations Code, Chapter 353, Health and Safety Code, Chapters 12 and 1001; and Government Code, Chapter 531.

§128.1. *Introduction.*

(a) (No change.)

(b) These sections cover definitions; permit fees; petition for rulemaking; sale or delivery of contact lenses and prescription verification; display of permit; permit application requirements and procedures; renewal of permits; name and address changes; filing complaints and complaint investigations; grounds for disciplinary actions; informal dispositions; formal hearings; and guidelines for issuing permits to persons with criminal convictions.

§128.2. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words and terms defined in the Texas Contact Lens Prescription Act shall have the same meaning in this chapter as that assigned in the Act.

(1) - (4) (No change.)

[(5) Board—The Texas Board of Health.]

(5) [(6)] Commissioner--The Commissioner of the [Texas] Department of State Health Services.

(6) [(7)] Department--The [Texas] Department of State Health Services.

(7) Executive Commissioner--The Executive Commissioner of the Health and Human Services Commission.

(8) - (9) (No change.)

§128.3. *Fees.*

(a) The permit fees are as follows:

(1) (No change.)

(2) \$75 for a one-year term and \$150 for a two-year term for an optician who has not registered with the department under the Opticians' Registry Act, Occupations Code, Chapter 352; and

(3) \$50 for a two-year term for a retired optician providing voluntary charity care who has registered with the department under the Opticians' Registry Act, Occupations Code, Chapter 352;

(4) \$75 for a two-year term for a retired optician who has not registered with the department under the Opticians' Registry Act, Occupations Code, Chapter 352; and

(5) [(3)] \$300 for a one-year term and \$600 for a two-year term for a business entity.

(b) - (c) (No change.)

§128.4. *Petition for Rulemaking.*

The Executive Commissioner's [~~board's~~] procedures for the submission, consideration, and disposition of a petition to adopt a rule are set out in 1 TAC §351.2 [~~§1.84 of this title~~] (relating to Petition for the Adoption of a Rule).

§128.5. *Sale or Delivery of Contact Lenses and Prescription Verification.*

(a) An individual or business holding a permit shall comply with the federal "Fairness to Contact Lens Consumers Act" Public Law 108-164, and applicable standards in Occupations Code, Chapter 353. [If federal and state laws establish conflicting standards for the dispensing of contact lenses, permit holders shall comply with federal law.]

(1) A permit holder may not deliver or dispense contact lenses to a customer unless the permit holder:

(A) receives a valid prescription directly or by facsimile; or

(B) verifies a prescription in accordance with this subsection.

(2) A permit holder shall retain an electronic or paper record of each prescription or verification for a minimum of two years from the last date lenses were dispensed based on that prescription or verification. The record shall contain all information specified by federal and state laws and rules related to requirements for a prescription or verification, including any authorized modification showing the number of lenses dispensed. If the prescription is extended by the prescriber, a record of the extension or verification of the extension shall also be maintained.

(3) A permit holder may not sell, deliver, or dispense contact lenses in a flea market.

(b) A prescription is considered verified if it meets the standards for verification set out by federal law, the "Fairness to Contact Lens Consumers Act" (Public Law 108-164), federal rules, 16 CFR Part 315 (Contact Lens Rule) and state law, Occupations Code, §353.1015.

(c) A prescription may only be verified by direct communication, which means completed communication by telephone, facsimile, or electronic mail. A prescription is verified only if one of the following occurs:

(1) the prescriber confirms the prescription is accurate by direct communication with the permit holder;

(2) the prescriber informs the permit holder through direct communication that the prescription is inaccurate and provides the accurate prescription; or

(3) the prescriber fails to communicate with the permit holder within eight business hours after receiving from the permit holder the information described in subsection (d) of this section.

(d) It is the responsibility of the permit holder to provide the prescriber with all information required by federal and state law for the verification of a prescription, including:

(1) the patient's full name and address;

(2) the contact lens power, manufacturer, base curve or appropriate designation, and diameter when appropriate;

(3) the quantity of lenses ordered;

(4) the date of patient request;

(5) the date and time of verification request; and

(6) the name of a contact person at the permit holder's company, including facsimile and telephone numbers.

(e) If the permit holder opts to include the prescriber's regular business hours on Saturdays as "business hours" as specified by subsection (c)(3) of this section, a clear statement of the prescriber's regular Saturday business hours must be included with the verification request.

(f) If a permit holder attempts to verify a prescription, and a prescriber informs a permit holder before the deadline specified by subsection (c)(3) of this section that the contact lens prescription is inaccurate, expired, or otherwise invalid, the permit holder shall not fill the prescription. The prescriber shall specify the basis for the inaccuracy or invalidity of the prescription. If the prescription communicated by the permit holder to the prescriber is inaccurate, the prescriber shall correct it, and the prescription shall then be deemed verified.

(g) During the eight business hours specified by subsection (c)(3) of this section, the permit holder shall provide a reasonable opportunity for the prescriber to communicate with the permit holder concerning the verification request.

(h) The Executive Commissioner and the executive director of the Texas Optometry Board may enter into interagency agreements as necessary to implement and enforce this chapter.

§128.9. Renewal of Permit.

(a) - (l) (No change.)

(m) A retired individual permit holder who wishes to dispense contact lenses only in the provision of voluntary charity care may renew the permit every two years by submitting the renewal form and the retired contact lens dispenser renewal fee in accordance with the renewal procedures described in this section. Voluntary charity care means dispensing contact lenses at no cost to the consumer. A retired contact lens dispenser who renews under this subsection may not sell contact lenses or receive any remuneration for dispensing lenses.

(n) [(m)] A permit holder whose check for the renewal fee is not honored by the financial institution shall remit to the department a money order or cashier's check within 30 days of the date of the permit holder's receipt of the department's notice. If proper payment is not

received, the permit shall not be renewed. If a renewed permit has already been issued, it shall be ineffective.

(o) [(n)] If a permit holder fails to timely renew his or her permit because the permit holder is or was on active duty with the armed forces of the United States of America serving outside the state of Texas, the permit holder may renew the permit pursuant to this subsection.

(1) Renewal of the permit may be requested by the permit holder, the permit holder's spouse, or an individual having power of attorney from the permit holder. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) Renewal may be requested before or after expiration of the permit. Permit holders who renew in accordance with this subsection shall be excused from paying late fees and penalties.

(3) A copy of the official orders or other official military documentation showing that the permit holder is or was on active duty serving outside the State of Texas shall be filed with the department along with the renewal form.

(4) A copy of the power of attorney from the permit holder shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.

(p) [(o)] The department shall not renew a permit if renewal is prohibited by the Education Code, §57.491 (relating to Loan Default Ground for Nonrenewal of Professional or Occupational License).

(q) [(p)] The department shall not renew a permit if renewal is prohibited by a court order or attorney general's order issued pursuant to the Family Code, Chapter 232 (relating to Suspension of License), for failure to pay child support or failure to comply with a court order providing for the possession of or access to a child.

§128.14. Formal Hearings.

(a) (No change.)

(b) Copies of the formal hearing procedures are indexed and filed in the administrator's office, Professional Licensing and Certification Unit [Division], 1100 West 49th Street, Austin, Texas 78756-3183, and are available for public inspection during regular working hours.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 17, 2006.

TRD-200600859

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: April 2, 2006

For further information, please call: (512) 458-7111 x6972



CHAPTER 460. MISCELLANEOUS

SUBCHAPTER A. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

DIVISION 1. TDMHMR RULEMAKING

25 TAC §§460.1 - 460.8

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§460.1 - 460.8, concerning rulemaking by the Texas Department of Mental Health and Mental Retardation (TDMHMR).

BACKGROUND AND PURPOSE

The repeal is necessary to comply with Acts 2003, 78th Legislature, Regular Session, Chapter 198 (House Bill 2292), §§1.18 and 1.26, which abolished the TDMHMR, one of the department's legacy agencies, and transferred its rulemaking authority to the Executive Commissioner of the Health and Human Services Commission (HHSC) effective September 1, 2004. Repeal of these sections is necessary to align the department's rules more accurately with House Bill 2292. The rules and this Proposed Preamble were previously published as proposed in the *Texas Register* but expired on November 10, 2005, before final adoption and publication occurred. The department now is taking the rules through the rulemaking process again.

SECTION-BY-SECTION SUMMARY

The repeal of §§460.1 - 460.8 is necessary to align the department's rules with the requirements of House Bill 2292 concerning the transfer of rulemaking authority from the TDMHMR to the Executive Commissioner of HHSC.

FISCAL NOTE

Cathy B. Campbell, General Counsel, Office of General Counsel, has determined that for each year of the first five-year period that the repeals will be in effect, there will be no fiscal implications to state or local government as a result of repealing the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Campbell has also determined that there are no anticipated economic costs to small businesses, micro-businesses or persons because the rules are no longer necessary, and business practices will not be altered in order to comply with the proposed repeal of the sections. There will be no impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Campbell has also determined that for each year of the first five years the repeal of the sections is in effect, the public benefit anticipated as a result of the repeal is to eliminate possible confusion caused by reference to the TDMHMR agency, which no longer exists, and reference to the rules concerning the TDMHMR rulemaking authority, which was transferred to the Executive Commissioner of the HHSC.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment

or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeals do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Sara Richardson, Legal Assistant, Office of General Counsel, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111 extension 6961. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

The proposed repeal is authorized by Acts 2003, 78th Legislature, Regular Session, Chapter 198 (House Bill 2292), §§1.18 and 1.26, which abolished the Texas Department of Mental Health and Mental Retardation and transferred its rulemaking authority to the Executive Commissioner of the Health and Human Services Commission; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies reasonably necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeal affects the Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§460.1. *Purpose.*

§460.2. *Definitions.*

§460.3. *Coordination of the Rulemaking Process.*

§460.4. *Petitions for Rules or Changes to Rules.*

§460.5. *Public Comment on Rules.*

§460.6. *Emergency Rulemaking.*

§460.7. *Distribution.*

§460.8. *References.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 17, 2006.

TRD-200600858

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: April 2, 2006

For further information, please call: (512) 458-7111 x6972

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PART 12. TEXAS COUNCIL ON ALZHEIMER'S DISEASE AND RELATED DISORDERS

CHAPTER 801. PROCEDURES AND BYLAWS

The Texas Council on Alzheimer's Disease and Related Disorders (council) proposes the repeal of §§801.1 - 801.4 and new §801.1, concerning the conduct of its meetings.

BACKGROUND AND PURPOSE

The repeal and new sections are necessary to comply with the Health and Safety Code, Chapter 101, §101.006, which requires the council to adopt rules for the conduct of its meetings.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 801.1- 801.4 have been reviewed and the council has determined that reasons for repeal of these sections and proposing a new section continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

In accordance with Health and Safety Code, Chapter 101, the restructuring of the rules with the repeal of §§801.1 - 801.4 and new §801.1 documents in the rules previously defined "procedures" as "by-laws". The reorganization of the rules provides improved clarity in redefining the council's officers and their duties, meetings, quorums, and its voting membership.

FISCAL NOTE

Casey Blass, has determined that for each year of the first five-year period that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Casey Blass has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Casey Blass has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of administering the sections is to generate interest in council meetings through a clarification of the conduct of the council meetings in order that the public may be better informed regarding Alzheimer's Disease.

PUBLIC COMMENT

Comments on the proposal may be submitted to Bobby D. Schmidt, M.Ed., Program Specialist, Department of State Health Services, Disease Prevention and Intervention, Alzheimer's Disease, 1100 West 49th Street, Austin,

Texas 78756, (512) 458-7111, extension 6618 or by e-mail to Bobby.Schmidt@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

25 TAC §§801.1 - 801.4

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Council on Alzheimer's Disease and Related Disorders or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Health and Safety Code, Chapter 101, §101.006, which requires the council to adopt rules for the conduct of its meetings.

The proposed repeals affect the Health and Safety Code, Chapter 101. Review of the sections implements Government Code, §2001.039.

§801.1. *Statutory Requirements.*

§801.2. *Officers and Their Duties.*

§801.3. *Meetings.*

§801.4. *Amendment of Bylaws.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 17, 2006.

TRD-200600862

Debbie Hanna

Chair

Texas Council on Alzheimer's Disease and Related Disorders

Earliest possible date of adoption: April 2, 2006

For further information, please call: (512) 458-7111 x6972

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CHAPTER 801. PROCEDURES

25 TAC §801.1

STATUTORY AUTHORITY

The proposed new section is authorized by Health and Safety Code, Chapter 101, §101.006, which requires the council to adopt rules for the conduct of its meetings.

The proposed new section affects the Health and Safety Code, Chapter 101. Review of the sections implements Government Code, §2001.039.

§801.1. *Conduct of Meetings.*

(a) Applicable law. The Texas Council on Alzheimer's Disease and Related Disorders is created by the Health and Safety Code, Subtitle E, Chapter 101, 70th Legislature, Regular Session, 1987.

(b) Officers and their duties.

(1) The governor shall designate a member of the council who is not an agency representative as the chairman of the council to serve in that capacity at the will of the governor.

(2) The chairman shall preside at all council meetings at which he or she is in attendance, call meetings in accordance with this

section, assist in the preparation of the agenda, appoint committees, task forces or workgroups of the council with council consensus, cause proper reports to be made to the governor, lieutenant governor and speaker of the house and serve as spokesperson for the council. The chairman may serve as an ex-officio member of any subcommittee or workgroup of the council. The chairman may invite guests or speakers.

(3) The members of the council shall elect a vice-chairman each year.

(4) The vice-chairman shall perform the duties of the chairman in the absence or disability of the chairman. Should the office of the chairman become vacant, the vice-chairman shall serve until a successor is appointed.

(c) Meetings.

(1) The council shall meet at least two times in each calendar year and may meet at other times, as the chairman deems necessary.

(2) Each meeting of the council shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(3) A simple majority of the members of the council shall constitute a quorum for the purpose of transacting official business.

(4) The council is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(5) Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(6) Any action taken by the council must be approved by a majority of the voting members present once a quorum is established. Each member shall have one vote. A member may not authorize another individual to represent the member by proxy.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 17, 2006.

TRD-200600861

Debbie Hanna

Chair

Texas Council on Alzheimer's Disease and Related Disorders

Earliest possible date of adoption: April 2, 2006

For further information, please call: (512) 458-7111 x6972



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER E. CLAIMS PROCESSING-- PURCHASE VOUCHERS

34 TAC §5.58

The Comptroller of Public Accounts proposes new §5.58, concerning recovery of certain state agency overpayments. A brief description of the new section follows.

Subsection (a) defines important terms used in the section.

Subsection (b) specifies the scope of the recovery audit program, including the criteria for determining whether a state agency is exempt from the program.

Subsection (c) requires a state agency to cooperate fully with the recovery audit program. The subsection also specifies the circumstances under which a state agency may direct a consultant not to pursue recovery of a payment that the consultant considers to be an overpayment.

Subsection (d) governs the deposit of money recovered by a state agency under the recovery audit program.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no foreseeable implications relating to costs or revenues of the state or local governments.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of adopting the rule will be helping administer the program to detect and recover certain overpayments made by state agencies. The rule would not have an adverse effect on small businesses or micro-businesses. There is no significant economic cost to individuals who are required to comply with the rule.

Comments on the proposal may be addressed to Joani Bishop, Manager of Claims Division, P.O. Box 13528, Austin, Texas 78711. If a person wants to ensure that the comptroller considers and responds to a comment made about this proposal, then the person must ensure that the comptroller receives the comment not later than the 30th day after the issue date of the *Texas Register* in which this proposal appears. If the 30th day is a state or national holiday, Saturday, or Sunday, then the first workday after the 30th day is the deadline.

The new section is proposed under Government Code, §2115.003.

The new section implements Government Code, Chapter 2115.

§5.58. Recovery of Certain State Agency Overpayments.

(a) Definitions. In this section:

(1) "Consultant" means a person with which the comptroller has contracted under Government Code, Chapter 2115.

(2) "Investment vehicle" does not include real property.

(3) "Overpayment" has the meaning assigned by Government Code, §2115.001(1).

(4) "Recovery audit program" means the program established by the comptroller under Government Code, Chapter 2115, to recover vendor overpayments made by state agencies.

(5) "Retiree" means an individual who has been granted a retirement benefit under Government Code, Title 8, Subtitle B, C, D, E, or H.

(6) "Retirement benefit" includes a service retirement benefit, a disability retirement benefit, an occupational disability retirement benefit, a nonoccupational disability retirement benefit, and a death benefit paid by or on behalf of a retirement system.

(7) "Retirement system" means the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the optional

retirement program, the Judicial Retirement System of Texas Plan One, the Judicial Retirement System of Texas Plan Two, or the Texas Emergency Services Retirement System.

(8) "State agency" has the meaning assigned by Government Code, §2115.001(2).

(9) "State employee" means an officer or an employee of a state agency. The term does not include an independent contractor.

(10) "USAS" means the uniform statewide accounting system.

(11) "Vendor payment" does not include:

(A) a payment from money held outside the state treasury if the payment was not reported to USAS as a cash expenditure;

(B) a payment that already has been cancelled, recalled, refunded, or otherwise recovered;

(C) a payment that was made by warrant if it has not yet been negotiated;

(D) a payment of the compensation earned by a state employee;

(E) a payment of a retirement benefit by or on behalf of a retirement system;

(F) the refund by or on behalf of a retirement system of a member's accumulated contributions to the system;

(G) a payment of the amount deducted from:

(i) the compensation earned by a state employee; or

(ii) the payment by or on behalf of a retirement system of a retirement benefit or the refund of a member's accumulated contributions;

(H) a payment to an individual because of the individual's unemployment, under the Texas Unemployment Compensation Act, Labor Code, Title 4, Subtitle A;

(I) a payment to a governmental entity of this state, including a state agency, a municipality, a county, a public school district, a public school, or a political subdivision;

(J) a payment made by the Texas Department of Insurance in connection with the receivership of an insurance company;

(K) a payment for the purchase of a security or other investment vehicle, except that the term includes a payment of a commission or similar fee concerning the purchase;

(L) a payment of principal or interest, except that the term includes any interest paid under Government Code, Chapter 2251;

(M) a payment of the premium to provide group insurance coverage for state employees or retirees;

(N) a payment to a private person to administer a group insurance program for state employees or retirees;

(O) a payment of a loan to a private person if, as of the date of the payment, the entire amount of the loan is required to be repaid;

(P) a payment of a judgment against the state or a state agency or a payment to settle litigation involving the state or a state agency;

(Q) a payment made by a person that is not a state agency; or

(R) any other type of payment that the comptroller determines is not a vendor payment because the projected costs of including the payment type in the recovery audit program exceeds the projected amount of the recoveries from including the payment type in the program.

(b) Scope of the recovery audit program.

(1) Except as provided in paragraph (2) of this subsection, the recovery audit program applies to each state agency and each vendor payment made by a state agency.

(2) The recovery audit program does not apply to a state agency or any vendor payment made by the agency during a state fiscal year if:

(A) the total amount of the agency's cash expenditures during the immediately preceding two state fiscal years was equal to or less than \$100 million, as reported to USAS;

(B) the total amount of the agency's vendor payments during the immediately preceding two state fiscal years was less than 20% of the total amount of the agency's cash expenditures during those years, as reported to USAS; or

(C) the total amount of the agency's vendor payments during the immediately preceding two state fiscal years was less than \$62.5 million, as reported to USAS.

(c) Cooperation with the recovery audit program.

(1) A state agency that is subject to the recovery audit program shall cooperate fully with:

(A) any requirement of the comptroller established or adopted under Government Code, Chapter 2115; and

(B) any requirement of a consultant if the requirement is established or adopted pursuant to the recovery audit program.

(2) A state agency may direct a consultant not to pursue recovery of a payment that the consultant determines was an overpayment if:

(A) the agency determines that the payment was not in fact an overpayment and the comptroller agrees with the agency's determination; or

(B) the comptroller determines that recovery of the overpayment would not be in the best interests of the state.

(d) Deposit of amounts recovered.

(1) A state agency that recovers money as a result of a recovery audit conducted under Government Code, Chapter 2115, shall deposit the money as required by applicable law, including the State Funds Reform Act, Government Code, Chapter 404, Subchapter F. This paragraph applies only if:

(A) the agency did not receive the money from the federal government before expending the money; and

(B) the federal government did not reimburse the agency for the expenditure.

(2) A state agency that recovers money as a result of a recovery audit conducted under Government Code, Chapter 2115, shall deposit the money as required by applicable law, including the State Funds Reform Act, Government Code, Chapter 404, Subchapter F, and federal law. This paragraph applies only if:

(A) the agency received the money from the federal government before expending the money; or

(B) the federal government reimbursed the agency for the expenditure.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 14, 2006.

TRD-200600756

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: April 2, 2006

For further information, please call: (512) 475-0387



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 7. DADS ADMINISTRATIVE RESPONSIBILITIES

SUBCHAPTER A. STANDARD OPERATING PROCEDURES

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§7.1, 7.6, and 7.7, concerning the subchapter's purpose, the assignment and use of pooled vehicles, and inscriptions on state vehicles; new §7.3, concerning definitions; and the repeal of §§7.2 - 7.4, concerning application of the subchapter, compliance with nondiscrimination laws, and definitions, all of which are in Chapter 7, DADS Administrative Responsibilities, which has been renamed.

Background and Purpose

The amendments are proposed to update rules governing management of agency vehicles to comply with the State Vehicle Fleet Management Plan, as required by Government Code, §2171.1045. The amendments are also proposed to correct agency names, delete obsolete terms, and reflect new procedures and organizational structures resulting from the consolidation of health and human services agencies in compliance with Acts 2003, 78th Legislature, Regular Session, Chapter 198 (House Bill 2292).

The new section is proposed to establish a definitions section that contains words and terms currently appearing in the subchapter and to update the definitions of those terms to reflect current procedures and organizational structures.

The repeal is proposed to delete unnecessary or duplicative sections in the subchapter.

Section-by-Section Summary

The amendment to §7.1 updates the purpose of the subchapter and deletes a reference to state mental health facilities. The amendment to §7.6 replaces references to the Texas Department of Mental Health and Mental Retardation (TDMHMR) with

references to DADS and updates the names of state agencies and offices in which written documentation required by DADS' vehicle fleet management plan must be maintained. The amendment to §7.7 replaces a reference to individuals receiving services from TDMHMR with a more specific reference to individuals receiving services from DADS' mental retardation facilities, removes a reference to mental illness, and adds a reference to the law that governs inscriptions on state vehicles.

New §7.3 governs the definitions of words and terms appearing in the subchapter.

The repeal of §7.2 deletes a duplicative rule, since the entities to which the subchapter applies are listed in the proposed amendment to §7.1. The repeal of §7.3 deletes a rule that is not necessary because oversight of civil rights compliance in health and human services agencies has been transferred to HHSC. The repeal of §7.4 deletes references to obsolete agency names and definitions and allows the definitions section to be proposed with a new section number.

Fiscal Note

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed sections are in effect, enforcing or administering the proposed sections does not have foreseeable implications relating to costs or revenues of state or local governments.

Small Business and Micro-business Impact Analysis

DADS has determined that there is no adverse economic effect on small businesses, micro-businesses, or on businesses of any size as a result of enforcing or administering the proposed sections, because the sections apply to a state agency and have no effect on businesses.

Public Benefit and Costs

Lawrence M. Parker, DADS Chief Operating Officer, has determined that, for each year of the first five years the proposed sections are in effect, the public benefit expected as a result of enforcing the sections is that DADS will remain in compliance with the State Vehicle Fleet Management Plan as required by Government Code, §2171.1045 and the public will have access to rules that accurately reflect DADS procedures and organizational structure.

Mr. Parker anticipates that there will not be an economic cost to persons who are required to comply with the proposed sections. The proposed sections will not affect a local economy.

Takings Impact Assessment

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

Public Comment

Questions about the content of this proposal may be directed to Keith Romel at (512) 438-5140 in DADS' Administrative Management Services section. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-034, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

40 TAC §§7.1, 7.3, 7.6, 7.7

Statutory Authority

The amendments and new section are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS, and §2171.1045, which directs state agencies to adopt rules consistent with the management plan adopted under Texas Government Code, §2171.104, relating to the assignment and use of agency vehicles; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendments and new section implement Texas Government Code, §531.0055 and §2171.104, and Texas Human Resources Code, §161.021.

§7.1. Purpose.

The purpose of this subchapter is to describe certain[-:]

[(4)] [the] standard operating policies and procedures for DADS [state mental health facilities and state mental retardation] facilities, regional offices, and state office. [(SMHMRFs);]

[(2) requirements and rights of facilities; and]

[(3) rights protections for individuals receiving services from a facility.]

§7.3. Definitions.

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

- (1) CEO--The superintendent of a facility.
- (2) DADS--The Department of Aging and Disability Services.
- (3) Department--The Department of Aging and Disability Services.
- (4) Facility--A state mental retardation facility operated by DADS.
- (5) Individual--A person receiving services from a facility.
- (6) LAR (legally authorized representative)--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter and may include a parent, guardian, or managing conservator of a minor individual, a guardian of an adult individual, or a personal representative of a deceased individual.
- (7) Mental retardation--Subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period.
- (8) Material safety data sheet--The document provided by a manufacturer that describes a material's or part's chemical properties along with guidelines for proper use, storage, and disposal.
- (9) Non-commercial group--A group of people associated with an organization (for example, a civic, fraternal, religious, social, service, community, or public employee organization).
- (10) Sales receipt--A written statement issued by the seller that includes the date it was created and the cost of the item or service.
- (11) Trust fund--An account at a financial institution in a facility's control that contains funds of an individual.
- (12) Unauthorized departure that may have unusual consequences--The unauthorized departure of an individual that causes a rea-

sonably prudent staff member who has knowledge of the individual's condition to believe that harm or injury to the individual or to others may occur as a result of the unauthorized departure, for example, the unauthorized departure of an individual whom the treatment staff believes to be a danger to self or to others or the unauthorized departure of an individual who requires maintenance medication such as insulin.

§7.6. Assignment and Use of Pooled Vehicles.

(a) The DADS motor pool consists of agency vehicles permanently assigned to state office, a regional office, or a facility.

(b) [(a)] Except as provided by subsection (c) [(b)] of this section, a vehicle in the motor pool is [state-owned vehicles under the TDMHMR's control are assigned to the facility's motor vehicle pool and made] available for use as needed. A vehicle [Some of the vehicles] in the motor [vehicle] pool may be [organized in subpools and] assigned to a specific division or function (for example [divisions or functions (e.g.), building services, security, food services) [within the facility. The subpooled vehicles are available only to staff in that division or who perform job duties related to that function].

(c) [(b)] A [If a state-owned] vehicle in the motor pool may be [under the department's control is] assigned to an employee on a regular basis, if a facility superintendent, regional director, or the Administrative Management Services manager documents[-; then the facility CEO or designee must document] in writing that the assignment [and use of the vehicle] is critical to the needs and [TDMHMR's] mission of DADS. The facility superintendent, regional director, or Administrative Management Services manager must maintain the written documentation and send a copy to the Health and Human Services Commission's Facilities Fleet Management Office, the DADS Business Management Office, and the Texas Building and Procurement [must be maintained at the facility, sent to and maintained in the Central Office transportation office, and sent to the General Services] Commission, Office of Vehicle Fleet Management.

§7.7. Inscription on State Vehicles.

A state vehicle [State vehicles] used primarily for transporting individuals receiving services from a facility is exempt from the requirement in Texas Transportation Code, §721.002, [TDMHMR are not required] to have "Texas Department of Aging and Disability Services" [its inscription] printed on the vehicle. The purpose served by this exemption is to provide confidentiality, safety, and normalization for individuals receiving services and to reduce the stigma associated with [mental illness and] mental retardation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2006.

TRD-200600831

Phoebe Knauer

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: April 2, 2006

For further information, please call: (512) 438-3734



CHAPTER 7. TDMHMR AND FACILITY RESPONSIBILITIES

SUBCHAPTER A. STANDARD OPERATING PROCEDURES

40 TAC §§7.2 - 7.4

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

Statutory Authority

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS, and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055 and §2171.104, and Texas Human Resources Code, §161.021.

§7.2. Application.

§7.3. Compliance with Nondiscrimination Laws.

§7.4. Definitions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Phoebe Knauer

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER I. RESIDENT ASSESSMENT

40 TAC §19.801

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §19.801, concerning resident assessments, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification.

Background and Purpose

The purpose of the amendment is to require all nursing facilities to submit comprehensive resident assessments, including the Minimum Data Set (MDS) Resident Assessment, to DADS. Currently, DADS requires all nursing facilities to perform the MDS

Resident Assessment on all nursing facility residents; however, only those facilities certified to participate in Medicaid (Medicaid-certified facilities) are required to submit the MDS data to DADS. Senate Bill 48, 79th Texas Legislature, amended Texas Health and Safety Code, §242.403, to authorize DADS to require all nursing facilities to submit information necessary to ensure the quality of care in the facilities, including the MDS Resident Assessment. Under the new authority granted by state law, DADS will require non-Medicaid-certified facilities to submit the MDS data.

The amendment is also proposed to clarify and update language in the section.

Section-by-Section Summary

The proposed amendment to §19.801 removes language that requires the submittal of comprehensive resident assessments by Medicaid-certified and dually certified nursing facilities only, thus requiring all nursing facilities, regardless of Medicaid certification, to submit the resident assessments.

Throughout the proposed amendment, references to the Texas Department of Human Services or DHS are changed to the Department of Aging and Disability Services or DADS to reflect the current name of the state agency that licenses and regulates nursing facilities in Texas.

In paragraph (5), a federal regulation citation is clarified.

In paragraph (11), the phrase "and dually certified facilities" is added to clarify that the use of independent assessors, which is a federal law creation, does not apply to licensed-only nursing facilities.

In paragraph (12)(B), a cross-referenced section title is corrected, and in paragraph (12)(D), the name of the Texas Department of Health is corrected to the Department of State Health Services to accurately reflect its current name.

Fiscal Note

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

Small Business and Micro-business Impact Analysis

DADS has determined that there is no adverse economic effect on small businesses, micro-businesses, or on businesses of any size as a result of enforcing or administering the amendment, because nursing facilities affected by the amendment are already required to perform the MDS Resident Assessment and, therefore, are expected to have the automation resources necessary to meet the new requirement to submit the MDS data to DADS.

Public Benefit and Costs

Adelaide Horn, DADS Commissioner, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is that more complete and accurate information will be available to consumers and family members on the quality of care given in licensed-only facilities and in facilities with distinct, private-pay wings. The additional data will also allow DADS to give these facilities better feedback for their use in improving services and resident care.

Ms. Horn anticipates that there will not be an economic cost to persons who are required to comply with the amendment. The amendment will not affect a local economy.

Takings Impact Assessment

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

Public Comment

Questions about the content of this proposal may be directed to Leslie L. Cortes, M.D., at (512) 438-2567 in DADS' Medical Quality Assurance section. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-044, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Statutory Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.403, which requires DADS to adopt standards for quality of life and quality of care for residents of convalescent and nursing facilities and related institutions.

The amendment affects Texas Government Code, §531.0055 and §531.021, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §242.403.

§19.801. Resident Assessment.

A [The] facility must conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. The facility must electronically transmit [In Medicaid-certified and dually certified nursing facilities,] admission, annual, quarterly, and significant change assessments [must be transmitted electronically] to the [Texas] Department of Aging and Disability [Human] Services (DADS) [(DHS)].

(1) Admission orders. At the time each resident is admitted, the facility must have physician orders for the resident's immediate care.

(2) Comprehensive assessments.

(A) A facility must make a comprehensive assessment of a resident's needs, using the Resident Assessment Instrument (RAI), including the Minimum Data Set (MDS), specified by DADS [(DHS)]. ~~Licensed-only facilities do not have to complete Medicaid-specific sections.~~

(B) The assessment must include at least the following information:

- (i) identification and demographic information;
- (ii) customary routine;

- (iii) cognitive patterns;
- (iv) communication;
- (v) vision;
- (vi) mood and behavior patterns;
- (vii) psychosocial well-being;
- (viii) physical functioning and structural problems;
- (ix) continence;
- (x) disease diagnoses and health conditions;
- (xi) dental and nutritional status;
- (xii) skin condition;
- (xiii) activity pursuit;
- (xiv) medications;
- (xv) special treatments and procedures;
- (xvi) discharge potential;

(xvii) documentation of summary information regarding the additional assessment performed through the resident assessment protocols; and

(xviii) documentation of participation in assessment.

The assessment process must include direct observation and communication with the resident, as well as communication with licensed and nonlicensed direct care staff members on all shifts.

(C) A facility must conduct a comprehensive assessment of a resident as follows:

(i) within 14 calendar days after admission, excluding readmissions in which there is no significant change in the resident's physical or mental condition. For purposes of this section, "readmission" means a return to the facility following a temporary absence for hospitalization or for therapeutic leave.

(ii) within 14 calendar days after the facility determines, or should have determined, that there has been a significant change in the resident's physical or mental condition. For purposes of this section, a "significant change" means a major decline or improvement in the resident's status that will not normally resolve itself without further intervention by staff or by implementing standard disease-related clinical interventions, that has an impact on more than one area of the resident's health status, and requires interdisciplinary review or revision of the care plan, or both.

(iii) not less often than once every 12 months.

(3) Quarterly review assessment. A facility must assess a resident using the quarterly review instrument specified by DADS [(DHS)] and approved by the Centers for Medicare & Medicaid Services (CMS) not less frequently than once every three months.

(4) Use. A facility must maintain all resident assessments completed within the previous 15 months in the resident's active record and use the results of the assessments to develop, review, and revise the resident's comprehensive plan of care as specified in §19.802 of this title (relating to Comprehensive Care Plans).

(5) Preadmission Screening and Resident Review (PASARR). A Medicaid-certified facility must coordinate assessments with the PASARR program under Medicaid in 42 CFR, Part 483, Subpart C to the maximum extent practicable to avoid duplicative testing and effort.

(6) Automated data processing requirement [~~for Medicaid-certified and dually certified facilities only~~].

(A) Encoding data. Within seven days after a facility completes a resident's assessment, a facility must encode the following information for each resident in the facility:

- (i) admission assessment;
- (ii) annual assessment updates;
- (iii) significant change in status assessments;
- (iv) quarterly review assessments;
- (v) a subset of items upon a resident's transfer, reentry, discharge, and death, using the reentry tracking form and/or discharge tracking form; and
- (vi) background (face-sheet) information, if there is no admission assessment.

(B) Transmitting data. Within seven days after a facility completes a resident's assessment, a facility must be capable of transmitting to DADS [DHS] information for each resident contained in the MDS in a format that conforms to standard record layouts and data dictionaries, and that passes standardized edits defined by CMS and DADS [DHS].

(C) Monthly transmittal requirements. A facility must electronically transmit, at least monthly (within 31 days of the lock date), encoded, accurate, complete MDS data to DADS [DHS] for all assessments conducted during the previous month, including the following:

- (i) admission assessment;
- (ii) annual assessment;
- (iii) significant change in status assessment;
- (iv) significant correction of prior full assessment;
- (v) significant correction of prior quarterly assessment;
- (vi) quarterly review;
- (vii) a subset of items upon a resident's transfer, reentry, discharge, and death; and
- (viii) background (face-sheet) information, for an initial transmission of MDS data on a resident that does not have an admission assessment.

(D) Data format. The facility must transmit data in the format specified by DADS [DHS] and approved by CMS.

(E) Resident-identifiable information.

- (i) A facility may not release information that is resident-identifiable to the public.
- (ii) The facility may release information that is resident-identifiable to an agent only in accordance with a contract under which the agent agrees not to use or disclose the information except to the extent the facility itself is permitted to do so.

(7) Accuracy of assessments. The assessment must accurately reflect the resident's status.

(8) Coordination. A registered nurse must conduct or coordinate each assessment with the appropriate participation of health professionals.

(9) Certification.

(A) A registered nurse must sign and certify that the assessment is completed.

(B) Each individual who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.

(10) Penalty for falsification in Medicaid-certified and dually certified facilities.

(A) An individual who willfully and knowingly:

(i) certifies a material and false statement in a resident assessment is subject to a civil money penalty of not more than \$1,000 for each assessment; or

(ii) causes another individual to certify a material and false statement in a resident assessment is subject to a civil money penalty of not more than \$5,000 for each assessment.

(B) Clinical disagreement does not constitute a material and false statement.

(11) Use of independent assessors in Medicaid-certified facilities and dually certified facilities. If DADS [DHS] determines, under a certification survey or otherwise, that there has been a knowing and willful certification of false statements under paragraph (10) of this section, DADS [DHS] may require (for a period specified by DADS [DHS]) that resident assessments under this paragraph be conducted and certified by individuals who are independent of the facility and who are approved by DADS [DHS].

(12) Pediatric resident assessment.

(A) Pediatric assessments should be performed by licensed facility staff experienced in the care and assessment of children. Parents or guardians should be included in the assessment process. The potential for community transition should be discussed with the parents or guardians whenever an assessment occurs.

(B) The comprehensive assessment for children must include a record of immunizations, blood screening for lead, and developmental assessment. The local school district's developmental assessment may be used if available. See §19.1934 of this title (relating to Educational Requirements for Persons Under Age 22).

(C) Licensed facility staff should assess the child's functional status in relation to pediatric developmental levels, rather than adult developmental levels.

(D) The facility staff must ensure pediatric residents receive services in accordance with the guidelines established by the [Texas] Department of State Health Services' [Health's] Texas Health Steps (THSteps). For Medicaid-eligible pediatric residents between the ages of six months and six years, screening for lead poisoning must be done in accordance with THSteps guidelines.

(13) PASARR referrals for a resident [client] making a transition to a community-based setting. Each resident considered for transition to a community-based care setting must be identified to determine the presence of mental illness or mental retardation, regardless of whether the resident is receiving treatment or services for a mental illness or mental retardation. If the resident making the transition has ever been determined to meet the PASARR eligibility criteria, the facility must promptly notify the PASARR unit of DADS [DHS] and the mental retardation authority in accordance with §19.2500(c) of this title (relating to Preadmission Screening and Resident Review (PASARR)) before the transition.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 16, 2006.

TRD-200600838

Phoebe Knauer

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: April 2, 2006

For further information, please call: (512) 438-3734



SUBCHAPTER J. QUALITY OF CARE

40 TAC §19.910

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §19.910, concerning quality assurance early warning systems, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification.

Background and Purpose

The purpose of the amendment is to implement the provisions of Senate Bill (SB) 874, 79th Texas Legislature, which amended Texas Health and Safety Code, §255.003. SB 874 deleted the requirement in §255.003 for DADS' quality-of-care monitors to make unannounced monitoring visits to long-term care facilities. As a result, the proposed amendment provides an option for DADS' quality-of-care monitors to give a facility prior notice of their monitoring visits.

Section-by-Section Summary

The proposed amendment to §19.910(1) states that monitoring visits to long-term care facilities may be announced or unannounced. The amendment also replaces the term "aperiodic" with clearer language explaining that monitoring visits may occur on any day and at any time, including nights, weekends, and holidays.

Throughout the section, references to the Texas Department of Human Services or DHS are replaced with references to the Department of Aging and Disability Services or DADS.

Fiscal Note

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

Small Business and Micro-business Impact Analysis

DADS has determined that there is no adverse economic effect on small businesses or micro-businesses or on businesses of any size as a result of enforcing or administering the amendment, because the amendment places no new requirements on nursing facilities.

Public Benefit and Costs

Adelaide Horn, DADS Commissioner, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is

improved resident care in nursing facilities. Providing the facility with prior notice of a monitoring visit means that key staff at the facility will more likely be present when the visit is conducted and thus be more readily aware of the need for improvement as issues are identified.

Ms. Horn anticipates that there will not be an economic cost to persons who are required to comply with the amendment. The amendment will not affect a local economy.

Takings Impact Assessment

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

Public Comment

Questions about the content of this proposal may be directed to Leslie L. Cortes, M.D., at (512) 438-2567 in DADS' Medical Quality Assurance section. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-042, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Statutory Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 255, which authorizes DADS to establish a quality assurance early warning system for long-term care facilities and to create rapid response teams.

The amendment implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §§255.001 - 255.005.

§19.910. *Quality Assurance Early Warning System.*

The [Texas] Department of Aging and Disability [Human] Services (DADS)[(DHS)] uses an early warning system to detect conditions that could be detrimental to the health, safety, and welfare of residents.

(1) Quality-of-care monitors are based in regional offices and monitor long-term care (LTC) facilities on visits that may be announced or unannounced and may occur on any day and at any time [a regular, unannounced, aperiodic basis], including nights, weekends, and holidays.

(2) - (7) (No change.)

(8) Conditions observed by the quality-of-care monitor that may constitute an immediate threat to the health or safety of a resident will be immediately reported to the regional office supervisor for appropriate action and, as appropriate or as required by law, to law enforcement, adult protective services, other divisions of DADS [DHS], or other responsible agencies.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 16, 2006.

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Phoebe Knauer

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



40 TAC §19.911

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §19.911, concerning rapid response teams, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification.

Background and Purpose

The purpose of the amendment is to allow a rapid response team to be comprised of one quality-of-care monitor, rather than at least two quality-of-care monitors as the rule currently requires. A quality-of-care monitor is a registered nurse, pharmacist, or dietician employed by DADS who is trained and experienced in long-term care facility regulation, standards of practice, and evaluation of resident care. Rapid response teams visit long-term care facilities at the request of the facility. The amendment will permit nursing facilities in Texas to request a specific type of quality-of-care monitor (that is, a nurse, a pharmacist, or a dietician) to address a specific issue identified through DADS' quality assurance early warning system.

Section-by-Section Summary

The amendment to §19.911 changes the composition of a rapid response team from two or more quality-of-care monitors to one or more quality-of-care monitors. The amendment also replaces references to the Texas Department of Human Services (DHS) with references to DADS.

Fiscal Note

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

Small Business and Micro-business Impact Analysis

DADS has determined that there is no adverse economic effect on small businesses or micro-businesses or on businesses of any size as a result of enforcing or administering the amendment, because the amendment places no new requirements on businesses.

Public Benefit and Costs

Adelaide Horn, DADS Commissioner, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is that DADS will be able to use its resources more effectively by providing a discipline-specific response to a nursing facility's request for assistance. Such a response should have a positive impact on quality improvement efforts in the facility, with a resulting benefit to resident health and safety.

Ms. Horn anticipates that there will not be an economic cost to persons who are required to comply with the amendment. The amendment will not affect a local economy.

Takings Impact Assessment

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

Public Comment

Questions about the content of this proposal may be directed to Leslie L. Cortes, M.D., at (512) 438-2567 in DADS' Medical Quality Assurance section. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-043, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Statutory Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 255, which authorizes DADS to establish a quality assurance early warning system for long-term care facilities and to create rapid response teams.

The amendment implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §§255.001 - 255.005.

§19.911. Rapid Response Teams.

(a) Rapid response teams are comprised [~~composed~~] of one [~~two~~] or more quality-of-care monitors who can visit long-term care (LTC) facilities identified through the [Texas] Department of Aging and Disability [~~Human~~] Services' (DADS') [~~(DHS's)~~] early warning system.

(b) Rapid response teams may visit facilities that request DADS' [~~DHS's~~] assistance. A visit under this subsection may not occur before the 60th day after the date of an exit interview following an annual or follow-up survey or inspection.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 16, 2006.

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Phoebe Knauer

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



SUBCHAPTER T. ADMINISTRATION

40 TAC §19.1917

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §19.1917, concerning quality assessment and assurance, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification.

Background and Purpose

The purpose of the amendment is to comply with the requirement of Senate Bill 1525, 79th Legislature, which amended the Texas Health and Safety Code by adding Chapter 256 concerning safe patient handling and movement practices. Under existing rules, a Quality Assessment and Assurance Committee (QAAC) is maintained by a nursing facility to identify issues regarding quality assessment and assurance activities and develop and implement appropriate plans to correct identified quality deficiencies.

Section-by-Section Summary

The amendment to §19.1917 adds a requirement that a nursing facility's Quality Assessment and Assurance Committee adopt and ensure implementation of a policy that addresses safe resident handling and movement practices. The policy must identify, assess, and develop strategies to control risk of injury to residents and nurses associated with the lifting, transferring, repositioning, or moving of a resident.

Fiscal Note

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

Small Business and Micro-business Impact Analysis

DADS has determined that there is no adverse economic effect on small businesses or micro-businesses or on businesses of any size as a result of enforcing or administering the amendment because a nursing facility already provides training regarding safe resident handling and, therefore, implementing the QAAC policy will not put an undue burden on the nursing facility.

Public Benefit and Costs

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is the nursing facility's QAAC will have a policy in place to reduce the risk of injury to residents and nurses.

Ms. Durden anticipates that there will not be an economic cost to persons who are required to comply with the amendment. The amendment will not affect a local economy.

Takings Impact Assessment

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

Public Comment

Questions about the content of this proposal may be directed to Hannah Ndika at (512) 438-2133 in DADS' Regulatory Services

Policy Development and Support Unit. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-040, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Statutory Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities; and Texas Health and Safety Code, Chapter 256, which requires a policy for safe resident handling and movement practices.

The amendment affects Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §§242.001-242-852, 256.001, and 256.002.

§19.1917. *Quality Assessment and Assurance.*

(a) - (d) (No change.)

(e) The Quality Assessment and Assurance Committee must adopt and ensure implementation of a policy to identify, assess, and develop strategies to control risk of injury to residents and nurses associated with the lifting, transferring, repositioning, or moving of a resident. The policy must establish a process that includes:

(1) analysis of the risk of injury to both residents and nurses posed by the resident handling needs of the resident populations served by the nursing facility and the physical environment in which resident handling and moving occurs;

(2) annual in-service education of nurses in the identification, assessment, and control of risk of injury to residents and nurses during resident handling;

(3) evaluation of alternative ways to reduce risks associated with resident handling, including evaluation of equipment and the environment;

(4) restriction, to the extent feasible with existing equipment and aids, of manual resident handling or moving of all or most of a resident's weight to emergency, life-threatening, or otherwise exceptional circumstances;

(5) collaboration with and an annual report to the nurse staffing committee;

(6) specific procedures for nurses to refuse to perform or be involved in resident handling or moving that the nurse believes in good faith will expose a resident or a nurse to an unacceptable risk of injury;

(7) submission of an annual report by the nursing staff to the Quality Assessment and Assurance Committee on activities related to the identification, assessment, and development of strategies to control risk of injury to residents and nurses associated with the lifting, transferring, repositioning, or moving of a resident; and

(8) in developing architectural plans for constructing or remodeling a nursing facility or a unit of a nursing facility in which resident handling and moving occurs, consideration of the feasibility of

incorporating resident handling equipment or the physical space and construction design needed to incorporate that equipment at a later date.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2006.

TRD-200600803

Phoebe Knauer

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: April 2, 2006

For further information, please call: (512) 438-3734



CHAPTER 30. MEDICAID HOSPICE PROGRAM

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§30.32, 30.62, 30.82, and 30.100, concerning disclosure, claims processing, sanctions, and additional requirements; new §§30.2, 30.30, 30.34, and 30.36, concerning purpose, general contracting, termination of a contract, and written information; and the repeal of §§30.2, 30.30, 30.34, and 30.36 concerning program basis, requirements for participation, change of ownership, and effective date of contracts, in Chapter 30, Medicaid Hospice Program.

Background and Purpose

The purpose of the amendments, new sections, and repeal is to require hospice contracts to follow additional requirements in the Contracting for Community Care Services chapter, clarify current hospice rules, and add a new rule covering voluntary termination of a contract. The rules will clarify that a hospice must have a contract before billing for Medicaid services and identify the requirements for general contracting, disclosure, contract termination, processing claims, and sanctions.

Section-by-Section Summary

New §30.2 establishes the purpose of the Medicaid Hospice Program chapter, which includes the contracting requirements for a hospice and the eligibility requirements for an individual electing Medicaid hospice.

The repeal of §§30.2, 30.30, 30.34, and 30.36 deletes requirements and contracting procedures that have been moved to the Contracting for Community Care Services chapter or reorganized within the Medicaid Hospice Program chapter.

New §30.30 requires a hospice to meet federal and state regulations in order to be approved for participation in the Medicaid Hospice Program. The new section also adds a requirement that a hospice must have a contract with DADS and an individual must elect the Medicaid hospice benefit before payment is made to the hospice. A hospice must also have a written contract with a nursing facility or intermediate care facility for persons with mental retardation or related conditions before payment is made to the hospice, if services are provided in such a facility. The amendment to §30.32 moves the procedures for requesting a hearing and sanction requirement to §30.82. New §30.34 requires a hospice to notify DADS in writing at the ad-

dress provided at least 10 days before the hospice terminates its contract. The new section also states the steps that a hospice must follow to help ensure the needs of individuals served by the hospice are met if the hospice terminates its contract. New §30.36 defines the acceptable methods for submitting written information to DADS.

The amendment to §30.62 requires a hospice to have a contract with DADS and to submit a complete and accurate claim. The amendment also adds that DADS will deny claims for hospice services and for room and board provided to an individual before the effective date of the Medicaid hospice contract.

The amendment to §30.82 removes the details of sanctions DADS may take against a hospice and adds a cross-reference to the rule governing sanctions in the Contracting for Community Care Services chapter. The amendment also updates the procedures for requesting a hearing. The amendment to §30.100 requires a hospice to document hospice services provided to an individual within the clinical or client record and removes a reference to the solicitation rule in the Contracting for Community Services chapter because a hospice must comply with the solicitation requirements in this chapter.

Fiscal Note

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments, new sections, and repeal are in effect, enforcing or administering the amendments, new sections, and repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

Small Business and Micro-business Impact Analysis

DADS has determined that there is no adverse economic effect on small businesses or micro-businesses or on businesses of any size as a result of enforcing or administering the amendments, new sections, and repeal, because the rules are being updated to reflect the reorganization of DADS contracting duties without adding requirements that will have an adverse economic effect on a hospice.

Public Benefit and Costs

Barry Waller, DADS Assistant Commissioner for Provider Services, has determined that, for each year of the first five years the amendments, new sections, and repeal are in effect, the public benefit expected as a result of enforcing the amendments, new sections, and repeal is that the rules will clearly describe to a hospice the contract and claims procedures that DADS will monitor. The new rules will make it clear to a hospice that DADS will not make Medicaid payments until requirements within this chapter are met.

Mr. Waller anticipates that there will not be an economic cost to persons who are required to comply with the amendments, new sections, and repeal. The amendments, new sections, and repeal will not affect a local economy.

Takings Impact Assessment

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

Public Comment

Questions about the content of this proposal may be directed to Maxcine Tomlinson at (512) 438-3169 in DADS' Community Ser-

vices Policy Development and Support Unit. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-021, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714- 9030, within 30 days of publication in the *Texas Register*.

SUBCHAPTER A. INTRODUCTION

40 TAC §30.2

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

Statutory Authority

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§30.2. Program Basis.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2006.

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Phoebe Knauer

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



40 TAC §30.2

Statutory Authority

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new section affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§30.2. Purpose.

This chapter establishes the requirements for the Medicaid Hospice Program in Texas, both for hospices contracting with the Department of Aging and Disability Services to provide hospice services and for Medicaid-eligible individuals who elect the Medicaid Hospice Program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Phoebe Knauer

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



SUBCHAPTER C. PROVIDER REQUIREMENTS FOR ENTRANCE INTO THE TEXAS MEDICAID HOSPICE PROGRAM; DISCLOSURE REQUIREMENTS

40 TAC §§30.30, 30.34, 30.36

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

Statutory Authority

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§30.30. *Requirements for Participation as a Medicaid Hospice Provider.*

§30.34. *Change of Ownership.*

§30.36. *Effective Dates of Provider Contracts.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Phoebe Knauer

General Counsel

Department of Aging and Disability Services

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SUBCHAPTER C. CONTRACTING AND DISCLOSURE REQUIREMENTS

40 TAC §§30.30, 30.32, 30.34, 30.36

Statutory Authority

The new sections and amendment are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections and amendment affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§30.30. General Contracting Requirements.

(a) A hospice participating in the Medicaid Hospice Program must comply with the requirements in this chapter and with all federal and state regulations that govern the Medicaid Hospice Program, including the federal regulations in 42 Code of Federal Regulations Part 418 (Hospice Care).

(b) To be approved by the Department of Aging and Disability Services (DADS) for participation in the Medicaid Hospice Program and be awarded a contract, a hospice must:

(1) meet the provisions described in Chapter 49 of this title (relating to Contracting for Community Care Services), except for:

(A) §49.13(b) and (f)(1) of this title (relating to General Contractual Requirements);

(B) §49.14 of this title (relating to Provisional Contracts);

(C) §49.15(d)(2)(B) of this title (relating to Contract Assignment);

(D) §49.31(e) of this title (relating to Record Requirements);

(E) §49.41(c)(1) and (12) of this title (relating to Billings and Claims Payment);

(F) §49.42 of this title (relating to Method of Payment);

(G) §49.43 of this title (relating to Expedited Payments System);

(H) §49.61(a)(4) and (11) of this title (relating to Sanctions); and

(I) §49.63(a), (c), and (d) of this title (relating to Recontracting);

(2) be licensed in Texas as a home and community support services agency to provide hospice services; and

(3) maintain Medicare certification to provide hospice services through the Centers for Medicare and Medicaid Services.

(c) A hospice participating in the Medicaid Hospice Program must not have restrictive policies or practices, including:

(1) requiring an individual to execute a will with the hospice named as legatee or devisee;

(2) assigning an individual's life insurance to the hospice;

(3) transferring an individual's property to the hospice;

(4) requiring an individual to pay a lump sum or make any other payment or concession to the hospice beyond the recognized Medicaid rate;

(5) controlling or restricting an individual or legal representative in using the individual's personal needs allowance while in a nursing facility or an intermediate care facility for persons with mental retardation or related conditions (ICF/MR-RC);

(6) restricting an individual from transferring or withdrawing from the Medicaid Hospice Program at will, except as provided by state law;

(7) denying appropriate hospice care to an individual on the basis of the individual's race, religion, color, national origin, sex, age, disability, marital status, or source of payment; and

(8) preventing or requiring the execution of written or unwritten directives to reject life-sustaining procedures by an adult individual.

(d) If a hospice provides services to a resident of a nursing facility or an ICF/MR-RC, the hospice must have a written contract for the provision of services with the nursing facility or ICF/MR-RC.

(e) DADS does not pay for hospice services before the date:

(1) the hospice has a Medicaid hospice contract with DADS;

(2) the individual makes a valid election of the Medicaid hospice benefit as provided under subsection (f) of this section; and

(3) the hospice has a contract with a nursing facility or an ICF/MR-RC if hospice services are provided in a nursing facility or an ICF/MR-RC.

(f) For purposes of subsection (e)(2) of this section, a valid Medicaid hospice election must be dated on or after the requirements listed in subsection (e)(1) and (3) of this section have been met.

(g) If a hospice assigns its contract, it must be assigned in accordance with §49.15 of this title and the hospice to which the contract has been assigned must submit an updated Texas Medicaid Hospice Program Recipient Election/Cancellation/Discharge Notice form for each individual receiving Medicaid hospice services from the hospice.

(h) A hospice must allow legal representatives of DADS, the Texas Attorney General's Medicaid Fraud Control Unit, and the Texas Health and Human Services Commission to enter the premises at any

time to make inspections or privately interview the individuals receiving Medicaid hospice services.

§30.32. Disclosure Requirements [for a Medicaid Hospice Provider].

[(a)] A hospice [Medicaid providers] must disclose information in accordance with 42 CFR Part 455, Subpart B.

[(b) Failure to comply with 42 CFR Part 455, Subpart B, may result in suspension, termination, or other contract action including but not limited to holding Medicaid payments. To appeal a sanction, a Medicaid hospice provider must submit a written request for an appeal hearing to the Texas Department of Human Services (DHS), P.O. Box 149030, Mail Code W-613, Austin, Texas, 78714-9030. Hearings will be held in Austin, Texas.]

§30.34. Voluntary Termination of Hospice Contract.

(a) If a hospice wishes to voluntarily terminate its contract with the Department of Aging and Disability Services (DADS), regardless of the reason, the hospice must notify DADS in writing at least 10 days before the contract is terminated. The written notification must be sent to the Department of Aging and Disability Services, Community Services, Attention: Contracts, P.O. Box 149030, Mail Code W-517, Austin, Texas 78714-9030. Notification sent by overnight mail must be sent to the Department of Aging and Disability Services, Community Services, Attention: Contracts, 701 West 51st Street, Mail Code W-517, Austin, Texas 78751.

(b) At least 10 days before a hospice terminates its contract as provided in subsection (a) of this section:

(1) for each individual receiving Medicaid hospice services, the hospice must submit a Texas Medicaid Hospice Program Recipient Election/Cancellation/Discharge Notice form to DADS' claims processor indicating the individual has changed his designated hospice or revoked his election of hospice care; and

(2) for each individual receiving Medicaid hospice services who is changing his designated hospice, the hospice must ensure that a copy of the individual's active record is sent to the receiving hospice in order to ensure continuity of care and services to the individual.

(c) Submission of the Texas Medicaid Hospice Program Recipient Election/Cancellation/Discharge Notice form to DADS' claims processor is governed by §30.20 of this chapter (relating to Change of the Designated Hospice) and §30.18 of this chapter (relating to Revoking the Election of Hospice Care).

§30.36. Submission of Written Information.

A hospice must submit by mail, fax, or hand-delivery any written information that DADS requires of the hospice. DADS does not accept e-mail delivery.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2006.

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Phoebe Knauer

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: April 2, 2006

For further information, please call: (512) 438-3734

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SUBCHAPTER F. REIMBURSEMENT

40 TAC §30.62

Statutory Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§30.62. Medicaid Hospice Claims [Processing] Requirements.

(a) Requirement for payment.

(1) To receive Medicaid hospice payments, a hospice [an entity] must have a Medicaid hospice contract with the Department of Aging and Disability Services (DADS) [be licensed as a hospice, Medicare certified by the Centers for Medicare and Medicaid Services (CMS) as a hospice, and Medicaid certified by the Texas Department of Human Services (DHS)].

(2) To receive [A hospice that seeks] payment for providing Medicaid hospice services, a hospice must submit a complete and accurate claim for those services to DADS' [which the hospice is entitled to payment that must be received by DHS's] claims processor. The claim must be received by DADS' claims processor within 12 months after the date of service. For purposes of this section, the date of service is [defined as] the last day of the month in which the service was provided.

[(A)] If an individual's Medicaid eligibility for benefits is established after the provision of services, the 12-month period for submission of claims starts on the date the individual's Medicaid eligibility was [is] established.

[(B) Medicaid hospice payments are subject to availability of state and federally appropriated funds.]

[(C) Claims for services delivered before the effective date of this section must be submitted within 12 months of the effective date of this section:]

[(D) Adjustment to claims must be received by DHS's claims processor during the applicable 12-month period. Claims and adjustments rejected or denied during the 12-month period through no fault of the hospice may be paid upon approval by DHS:]

[(E) The requirement to submit claims within 12 months of the date of service does not prohibit a provider from re-billing in the case of state-generated retroactive adjustments:]

(b) Submittal and forms completion requirements. To receive Medicaid hospice [Hospice] payments, the hospice [provider] must submit the following documents to DADS' claims processor [Provider Claims Payment]:

(1) Texas Medicaid Hospice Program Recipient Election/Cancellation/Discharge [Election/Cancellation] Notice form,

which must not have an election date that is earlier than the effective date of the hospice's Medicaid contract;

(2) Medicaid/Medicare [Texas Medicaid] Hospice Program Physician Certification of Terminal Illness form;

(3) Texas Index for Level of Effort (TILE) Assessment form, if applicable; and

(4) level of need (LON) form, if available.

(c) Denials. DADS denies [DHS will deny] the following [provider] claims submitted by a hospice [to the Medicaid Hospice Program and/or other DHS programs]:

(1) claims for hospice services provided before the effective date of the Medicaid hospice contract;

(2) claims for room and board provided before the effective date of the Medicaid hospice contract;

(3) [(4)] claims for hospice services provided before the election date on the Texas [service days prior to a valid] Medicaid Hospice Program Election/Cancellation/Discharge [Election] Notice form and the Medicaid/Medicare [a] Physician Certification of Terminal Illness form [Illness(es)];

(4) [(2)] claims for services provided after the individual has revoked his [which have been returned to the provider or recipients who have revoked the] election of the Medicaid Hospice Program;

(5) [(3)] claims for individuals [recipients] who have been denied Medicaid eligibility and who were not eligible for Medicaid services when hospice services were provided;

(6) [(4)] claims for individuals who are dually eligible for Medicaid and Medicare and were [Medicare-Medicaid recipients who are] covered by the Medicare hospice [Hospice] benefit when services were provided; and

(7) [(5)] claims for hospice services provided by a hospice after its [providers whose] Medicaid hospice contract has been terminated [cancelled].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2006.

TRD-200600827

Phoebe Knauer

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: April 2, 2006

For further information, please call: (512) 438-3734



SUBCHAPTER H. ENFORCEMENT

40 TAC §30.82

Statutory Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which

provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§30.82. Sanctions.

(a) The [Texas] Department of Aging and Disability [Human] Services [(DHS)] may take sanctions against a hospice for failure to comply with the terms of the contract, [or] program rules, or both, as described in §49.61 of this title (relating to Sanctions).

(b) To appeal a sanction, a hospice must request a hearing from the Texas Health and Human Services Commission according to the provisions outlined in 1 TAC, Chapter 357, Subchapter I.

[(b) Sanctions may include one or more of the following at the discretion of DHS:]

[(4) Vendor hold:]

[(A) DHS may place a vendor hold upon one or all of a hospice provider's DHS contracts for reasons including, but not limited to:]

[(i) the hospice's failure to follow an agreed upon audit resolution payment plan;]

[(ii) the hospice's failure to provide service according to contract or program requirements;]

[(iii) the hospice's failure to comply with their corrective action plan;]

[(iv) DHS's recoupment of overpayments to a hospice and restitution of audit exceptions assessed against a hospice; or]

[(v) DHS's determination that client health and safety is jeopardized by the hospice's failure to comply with the terms of the contract or program requirements or both.]

[(B) DHS may accept an irrevocable letter of credit, in a format and an amount approved by DHS, to allow the release of all or a portion of vendor payments on hold. Vendor holds are released after resolution of all the reasons cited for the vendor hold.]

[(C) Held funds may be offset against any overpayments or audit exceptions attributable to the hospice.]

[(2) Contract termination. DHS may initiate contract termination for one or more reasons including, but not limited to:]

[(A) the hospice's failure to comply with the terms of the contract, rules, or program requirements;]

[(B) the hospice's failure to maintain a current required license;]

[(C) DHS's determination that client health and safety is jeopardized by the hospice's failure to comply with the terms of the contract or program requirements or both;]

[(D) the hospice's failure to comply with corrective action plans after receiving a warning from DHS that continued failure to comply with the corrective action plan, within 30 days of receiving the warning letter, could jeopardize their contract;]

[(E) the hospice's exclusion from contracting for Medicare or Medicaid services; or]

[(F) the hospice having validated reports of abuse, neglect, or exploitation when the perpetrator is an employee, volunteer, or owner who has or will have access to clients served through the contract.]

[(e) If the hospice has outstanding overpayments or audit exceptions upon termination of its contract, DHS can place vendor hold upon one or all of the hospice contracts that DHS has with a hospice that have the same owner as the terminated hospice contract and take the balance owed from funds being held.]

[(d) The provider agency has the right to appeal any adverse action against its contract by filing a written request for a hearing so that DHS receives the request within 15 calendar days after the provider agency receives DHS's written notification of adverse action. The provider must send the request for a hearing to the Hearings Department, Texas Department of Human Services (DHS), P.O. Box 149030, Mail Code W-613, Austin, Texas 78714-9030. Hearings will be held in Austin, Texas. Overnight mail must be sent to the Hearings Department, Texas Department of Human Services, 701 West 51st Street, Mail Code W-613, Austin, Texas 78751.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2006.

TRD-200600828
Phoebe Knauer
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: April 2, 2006
For further information, please call: (512) 438-3734



SUBCHAPTER J. MISCELLANEOUS

40 TAC §30.100

Statutory Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§30.100. Additional Requirements.

(a) A hospice [Hospice providers] must document hospice services provided to an individual in a nursing facility or an intermediate care facility for persons with mental retardation or related conditions (ICF/MR-RC) [chart procedures] in the nursing facility clinical record

or the ICF/MR-RC [intermediate care facility for persons with mental retardation or related conditions (ICF/MR-RC)] client record, and advise the nursing facility or ICF/MR-RC staff of changes in the individual's [recipient's] condition as necessary.

(b) A [The] hospice [provider] must have joint procedures with the nursing facility or ICF/MR-RC for ordering medications that ensure the proper payer is billed and for reconciling billing between the nursing facility or ICF/MR-RC and hospice [provider].

(c) An individual [The recipient] has the right to refuse any service provided by a nursing facility, ICF/MR-RC, or [a] hospice [provider].

[(d) The provider shall comply with the provisions of §49.23 of this title (relating to Advertising and Solicitation of Clients).]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Phoebe Knauer
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: April 2, 2006
For further information, please call: (512) 438-3734



CHAPTER 68. BUSINESS SERVICES

SUBCHAPTER E. FLEET MANAGEMENT

40 TAC §68.501

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of Chapter 68, Business Services, consisting of §68.501, concerning restrictions on assignment of vehicles.

Background and Purpose

The purpose of the repeal is to delete a rule that is duplicative and, therefore, is no longer necessary. The consolidation of health and human services agencies in September 2004 and the resulting transfer of certain rules from Title 25 to Title 40 of the Texas Administrative Code (TAC) left DADS with two rules governing the assignment of vehicles. Texas Government Code, §2171.1045, requires a state agency to promulgate rules relating to the assignment and use of the agency's vehicles.

Section-by-Section Summary

The repeal is proposed to delete a duplicative rule governing the assignment of agency vehicles. The remaining section governing assignment of vehicles is found at 40 TAC §7.6. An amendment to 40 TAC §7.6 is proposed elsewhere in this issue of the *Texas Register*.

Fiscal Note

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years after the repeal, there are no foreseeable implications relating to costs or revenues of state or local governments.

Small Business and Micro-business Impact Analysis

DADS has determined that the proposed repeal will have no adverse economic effect on small businesses or micro-businesses, or on businesses of any size, because the rule affects a state agency and imposes no requirements on businesses.

Public Benefit and Costs

Lawrence M. Parker, DADS Chief Operating Officer, has determined that, for each year of the first five years after the repeal, the public benefit expected as a result of repealing the section is that DADS will no longer have two rules governing the assignment and use of its vehicles.

Mr. Parker anticipates that there will not be an economic cost to persons who are affected by the repeal. The repeal will not affect a local economy.

Takings Impact Assessment

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

Public Comment

Questions about the content of this proposal may be directed to Keith Romel at (512) 438-5140 in DADS' Administrative Management Services section. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-034, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Statutory Authority

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§68.501. Restrictions on Assignment of Vehicles.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2006.

TRD-200600833

Phoebe Knauer
General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: April 2, 2006

For further information, please call: (512) 438-3734



CHAPTER 76. CRIMINAL HISTORY CHECK OF EMPLOYEES IN FACILITIES FOR CARE OF THE AGED AND PERSONS WITH DISABILITIES

40 TAC §§76.101 - 76.106

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of Chapter 76, consisting of §§76.101 - 76.106, Criminal History Check of Employees in Facilities for Care of the Aged and Persons with Disabilities.

Background and Purpose

The purpose of the repeal is to delete duplicative and obsolete rules from the DADS rule base. The requirements governing criminal history checks for employees working in facilities that care for the aged and persons with disabilities are contained in Texas Health and Safety Code, Chapter 250, Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities. DADS licensing rules currently refer directly to Texas Health and Safety Code, Chapter 250, therefore Chapter 76 is duplicative. Chapter 76 is based on an earlier version of Texas Health and Safety Code, Chapter 250, so that some of its provisions are now obsolete.

Section-by-Section Summary

The repeal is proposed to delete duplicative and obsolete criminal history check rules for employees working in facilities that care for the aged and persons with disabilities in Chapter 76. The current introduction is found in Texas Health and Safety Code, §250.001; the current provisions concerning a pre-employment criminal history check and the application for and retention of a criminal history check are contained in §250.002 and §250.004; the current provisions concerning the result of a criminal history check are contained in §250.003 and §250.006; the current confidentiality provisions are contained in §250.007; and the material concerning the correction of a mistake is located in §250.005.

Fiscal Note

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years after the repeal, there are no foreseeable implications relating to costs or revenues of state or local governments.

Small Business and Micro-business Impact Analysis

DADS has determined that the proposed repeal will have no adverse economic effect on small businesses or micro-businesses, or on businesses of any size, because the repeal deletes a du-

plicative and obsolete chapter and does not affect current licensing requirements.

Public Benefit and Costs

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years after the repeal, the public benefit expected as a result of repealing the chapter is that the DADS rule base will no longer contain an obsolete chapter, thus minimizing the potential for confusion.

Ms. Durden anticipates that there will not be an economic cost to persons who are affected by the repeal. The repeal will not affect a local economy.

Takings Impact Assessment

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

Public Comment

Questions about the content of this proposal may be directed to Hannah Ndika at (512) 438-2133 in DADS' Regulatory Services, Policy Development and Support Unit. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-041, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study

and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal affects Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§76.101. *Introduction.*

§76.102. *Pre-employment Criminal History Check.*

§76.103. *Application for and Retention of Criminal History Check.*

§76.104. *Result of Criminal History Check.*

§76.105. *Criminal History Confidentiality.*

§76.106. *Correction of Mistakes of Fact or Identity in Criminal History Record.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2006.

TRD-200600830

Phoebe Knauer

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: April 2, 2006

For further information, please call: (512) 438-3734

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.6

The Texas State Board of Pharmacy withdraws the emergency amendment to §283.6 which appeared in the October 7, 2005, issue of the *Texas Register* (30 TexReg 6337).

Filed with the Office of the Secretary of State on February 14, 2006.

TRD-200600773
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: March 6, 2006
For further information, please call: (512) 305-8037



CHAPTER 291. PHARMACIES SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.13

The Texas State Board of Pharmacy withdraws the emergency new §291.13 which appeared in the October 7, 2005, issue of the *Texas Register* (30 TexReg 6338).

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Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8037

CHAPTER 295. PHARMACISTS

22 TAC §295.6

The Texas State Board of Pharmacy withdraws the emergency new §295.6 which appeared in the October 7, 2005, issue of the *Texas Register* (30 TexReg 6339).

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Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8037



22 TAC §295.9

The Texas State Board of Pharmacy withdraws the emergency amendment to §295.9 which appeared in the October 7, 2005, issue of the *Texas Register* (30 TexReg 6340).

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Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8037



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 6. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER A. GENERAL RULES

1 TAC §6.5

The Texas Ethics Commission adopts an amendment to §6.5, relating to the authority of the Texas Ethics Commission to adopt rules. The amendment is adopted without changes to the proposed text as published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 7955) and will not be republished.

The amendment to §6.5 revises the rule that establishes the Ethics Commission's authority to adopt rules. The amendment would prohibit the commission from adopting a rule that in the opinion of the commission directly addresses the subject matter of pending litigation known to the commission.

The Ethics Commission received the following comments regarding the adoption of the amendment.

Ms. Kathy Hutto, Governmental Affairs Consultant with Jackson Walker, L.L.P., stated that "[t]his rule is not needed as the Commission currently has the authority to act or not act on a rule. If adopted, this rule would eliminate the Commission's ability to consider rulemakings if needed to provide guidance or give clarity to those whom you regulate. It is understandable that the Commission may not want to adopt rules in the middle of litigation involving the same subject, but that is possible now. Unnecessarily restricting the Commission from having flexibility when needed may prove to be very shortsighted."

Mr. Jack Gullahorn, President and General Counsel with the Professional Advocacy Association of Texas, stated that "[t]he proposed rule limiting the Commission's ability to adopt rules is unnecessary as the Commission already has no obligation nor mandate to propose or adopt any rule if the Commission determines that justice, equity or particular circumstances should preclude the adoption, or even publication of the rule for public input and comment."

Mr. Gullahorn further stated that "[t]he proposed rule under consideration would unnecessarily restrict the power of the Commission to meet its obligations to advise the public as to the application and administration of the various statutes falling under the Commission's jurisdiction. The proposed rule should not be adopted."

The Ethics Commission considered comments from all parties but was satisfied with the rule as proposed. No change was made as a result of the comments.

The amendment is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2006.

TRD-200600785

David A. Reisman

Executive Director

Texas Ethics Commission

Effective date: March 6, 2006

Proposal publication date: December 2, 2005

For further information, please call: (512) 463-5800



CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.23

The Texas Ethics Commission adopts an amendment to §18.23, relating to administrative waivers of fines. The amendment is adopted without changes to the proposed text as published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 7955) and will not be republished.

The amendment to §18.23 revises the rule relating to administrative waivers of fines by extending the reasons for which the executive director may grant a waiver of a late fine assessed in connection with a personal financial statement. Currently, the executive director has the authority to administratively waive a late fine for certain filers if the personal financial statement was the first one that the filer was required to file. Section 18.23 would allow the executive director to waive a late fine for certain filers if the personal financial statement was the first one to be filed late.

Section 18.23 also clarifies the applicability of the rule in connection with campaign finance reports.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200600787

David A. Reisman

Executive Director

Texas Ethics Commission

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For further information, please call: (512) 463-5800



CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER F. REPORTING REQUIREMENT FOR A GENERAL-PURPOSE COMMITTEE

1 TAC §§20.417, 20.431, 20.434, 20.441

The Texas Ethics Commission adopts the amendments to §§20.417, 20.431, 20.441, and new §20.434, relating to alternative reporting requirements for general-purpose committees. The amendments and new rule are adopted without changes to the proposed text as published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 7956) and will not be republished.

Section 20.417 relates to the filing requirement of a campaign treasurer of a general-purpose committee whose appointment was terminated. The amendment reflects the reporting requirement of new §20.434.

Section 20.431 relates to the filing requirement of a general-purpose committee that files campaign finance reports monthly. The amendment reflects the reporting requirement of new §20.434.

Section 20.441 relates to the contents of a dissolution report filed by a general-purpose committee. The amendment reflects the reporting requirement of new §20.434.

Section 20.434 clarifies §254.1541 of the Election Code by providing that the alternative reporting requirement applies only to political contributions.

No comments were received regarding the adoption of the amendments and new rule.

The amendments and new rule are adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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David A. Reisman

Executive Director

Texas Ethics Commission

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For further information, please call: (512) 463-5800



SUBCHAPTER I. RULES APPLICABLE TO A POLITICAL PARTY'S COUNTY EXECUTIVE COMMITTEE

1 TAC §20.553, §20.555

The Texas Ethics Commission adopts the amendments to §20.553 and §20.555, relating to the filing requirements for a county executive committee. The amendments are adopted without changes to the proposed text as published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 7957) and will not be republished.

Section 20.553 currently requires county executive committees that make or accept political contributions that in the aggregate, exceed \$5,000 in a calendar year, to file a campaign treasurer appointment and file campaign finance reports. The amended rule tracks a statutory change and raises the \$5,000 to \$25,000. A county executive committee that accepts or makes political contributions that in the aggregate do not exceed \$25,000 in a calendar year is not required to file a campaign treasurer appointment and is not required to file campaign finance reports.

Section 20.555 currently requires county executive committees to appoint a campaign treasurer and file campaign finance reports if the committee accepts or makes political contributions that in the aggregate exceed \$5,000. The amended rule would raise the threshold to \$25,000, to reflect the new law.

No comments were received regarding the adoption of the amendments to §20.553 and §20.555.

The amendments are adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200600789

David A. Reisman

Executive Director

Texas Ethics Commission

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Proposal publication date: December 2, 2005

For further information, please call: (512) 463-5800



CHAPTER 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

1 TAC §22.25

The Texas Ethics Commission adopts the repeal of §22.25, relating to the maintenance of political contributions in bank accounts. The repeal of the rule is adopted without changes to the proposal as published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 7958) and will not be republished.

Section 22.25 requires both campaign and officeholder contributions to be commingled in each account kept by a candidate or officeholder. Commingling funds is no longer required. Section 253.040 of the Election Code, provides that "each candidate or officeholder shall keep the person's campaign and officeholder contributions in one or more accounts that are separate from any other account maintained by the person." The repeal of the rule would conform to §253.040 of the Election Code.

No comments were received regarding the adoption of the repeal of §22.25.

The repeal is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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David A. Reisman

Executive Director

Texas Ethics Commission

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For further information, please call: (512) 463-5800



TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.9

The Texas State Board of Pharmacy adopts amendments to §281.9, concerning Rules Governing Penalties Against a License. The amendments are adopted without changes to the proposed text as published in the December 9, 2005, issue of the *Texas Register* (30 TexReg 8259).

The amendments update the rule in accordance with amendments made to the Texas Pharmacy Act, §568.0035 authorizing the Board to take the following disciplinary actions against a pharmacy technician registration: probation, reprimand, restrict, revoke, suspend, retire, or impose an administrative penalty. The amendments also clarify the administrative penalties for violations of the Texas Pharmacy Act or Board rules to ensure that the amount of administrative penalties imposed for pharmacists, pharmacies, and pharmacy technicians are appropriate to the vi-

olation. In addition, the amendments change the title of §281.9 from Rules Governing Penalties Against a License to Rules Governing Disciplinary Actions.

No comments were received regarding the proposal.

The amendments are adopted under §§551.002, 554.051, 566.002, and 568.0035 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §566.002 as authorizing the agency to adopt an administrative penalty schedule. The Board interprets §568.0035 as authorizing the agency to adopt rules regarding the disciplinary actions against pharmacy technicians.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2006.

TRD-200600763

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: March 6, 2006

Proposal publication date: December 9, 2005

For further information, please call: (512) 305-8037



CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.6

The Texas State Board of Pharmacy adopts amendments to §283.6, concerning Preceptor Requirements. The amendments are adopted without changes to the proposed text as published in the December 9, 2005, issue of the *Texas Register* (30 TexReg 8261).

The adopted amendments provide procedures and requirements to allow a preceptor in a Texas College of Pharmacy Internship Program to supervise up to two interns during an emergency situation.

No comments were received regarding the proposal.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2006.

TRD-200600764
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: March 6, 2006
Proposal publication date: December 9, 2005
For further information, please call: (512) 305-8037



22 TAC §283.7

The Texas State Board of Pharmacy adopts amendments to §283.7, concerning Examination Requirements. The amendments are adopted without changes to the proposed text as published in the December 9, 2005, issue of the *Texas Register* (30 TexReg 8262).

The amendments clarify the NAPLEX and Texas Pharmacy Jurisprudence Examination are administered in compliance with the Americans with Disabilities Act.

No comments were received regarding the proposal.

The amendments are adopted under §§551.002, 554.051, and 558.058 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §558.058 as authorizing the agency to adopt rules to ensure that examinations are administered in compliance with the Americans with Disabilities Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200600765
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: March 6, 2006
Proposal publication date: December 9, 2005
For further information, please call: (512) 305-8037



22 TAC §283.10

The Texas State Board of Pharmacy adopts amendments to §283.10, concerning Requirements for Application for a Pharmacist License Which Has Expired. The amendments are adopted without changes to the proposed text as published in

the December 9, 2005, issue of the *Texas Register* (30 TexReg 8262).

The amendments update the renewal fees required to renew an expired pharmacist license in accordance with amendments to §559.003 of the Texas Pharmacy Act.

No comments were received regarding the proposal.

The amendments are adopted under §§551.002, 554.051, and 559.003 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §559.003 as authorizing the agency to adopt rules regarding the renewal of a pharmacist.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
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Proposal publication date: December 9, 2005
For further information, please call: (512) 305-8037



CHAPTER 291. PHARMACIES SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.6, §291.14

The Texas State Board of Pharmacy adopts amendments to §291.6, concerning Pharmacy License Fees and §291.14, concerning Pharmacy License Renewal. The amendments are adopted without changes to the proposed text as published in the December 9, 2005, issue of the *Texas Register* (30 TexReg 8263).

The amendments update the renewal fees to renew an expired pharmacy license in accordance with amendments to §561.003 of the Texas Pharmacy Act; clarify the amount of the pharmacy license renewal fee; and establish additional renewal requirements for Class E (non-resident) pharmacies.

No comments were received regarding the proposal.

The amendments are adopted under §§551.002, 554.051, 560.052, 561.003 and 561.0031 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets

§560.052 as authorizing the agency to establish standards for Class E pharmacies to meet in order to qualify for licensing as a pharmacy. The Board interprets §561.003 as authorizing the agency to adopt rules regarding the renewal of a pharmacy license. The Board interprets §561.0031 as authorizing the agency to establish additional renewal requirements for Class E pharmacies.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gay Dodson, R.Ph.

Executive Director/Secretary

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22 TAC §291.13

The Texas State Board of Pharmacy adopts new §291.13, concerning Emergency Remote Pharmacy License. The new section is adopted without changes to the proposed text as published in the December 9, 2005, issue of the *Texas Register* (30 TexReg 8264).

The adopted section provides procedures and requirements for the Board to grant the holder of a Class A (Community), Class C (Institutional), or Class D (Clinic) pharmacy the authority to operate a pharmacy and provide pharmacy services at a remote location during an emergency situation.

No comments were received regarding the proposal.

The new section is adopted under §§551.002, 554.051, and 560.053 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §560.053 as authorizing the agency to adopt rules establishing additional pharmacy classifications.

The statutes affected by the new section: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. NON-RESIDENT PHARMACY (CLASS E)

22 TAC §291.104

The Texas State Board of Pharmacy adopts amendments to §291.104, concerning Operational Standards. The amendments are adopted with changes to the proposed text as published in the December 9, 2005, issue of the *Texas Register* (30 TexReg 8265).

The amendments establish additional standards for Class E pharmacies to meet in order to qualify for licensure as a pharmacy; clarify patient counseling requirements for Class E pharmacies; and implement changes made by House Bill 836 to Chapter 562 of the Texas Pharmacy Act during the 79th Regular Session of the Texas Legislature regarding generic substitution.

One written comment was received from Medco Health Solutions, Inc. Medco commented that the requirement for a Class E pharmacy to submit proof of creditworthiness was only intended to apply to the initial licensure of a Class E pharmacy. The Board agrees with the comment and the adopted amendments reflect this change.

The amendments are adopted under §§551.002, 554.051, 560.052, and Chapter 562 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §550.052 as authorizing the agency to establish standards for Class E pharmacies to meet to qualify for licensing as a pharmacy. The Board interprets Chapter 562 of the Texas Pharmacy Act as authorizing the agency to adopt rules concerning the selection of generically equivalent drugs.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.104. *Operational Standards.*

(a) Licensing requirements.

(1) A Class E pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board.

(2) On initial application, the pharmacy shall follow the procedures specified in §291.1 of this title (relating to Pharmacy License Application) and provide the following additional information specified in §560.052(c) and (f) of the Act (relating to Qualifications):

(A) evidence that the applicant holds a pharmacy license, registration, or permit issued by the state in which the pharmacy is located;

(B) the name of the owner and pharmacist-in-charge of the pharmacy for service of process;

(C) evidence of the applicant's ability to provide to the board a record of a prescription drug order dispensed by the applicant to a resident of this state not later than 72 hours after the time the board requests the record;

(D) an affidavit by the pharmacist-in-charge which states that the pharmacist has read and understands the laws and rules relating to a Class E pharmacy;

(E) proof of creditworthiness; and

(F) an inspection report issued not more than two years before the date the license application is received and conducted by the pharmacy licensing board in the state of the pharmacy's physical location.

(i) A Class E pharmacy may submit an inspection report issued by an entity other than the pharmacy licensing board of the state in which the pharmacy is physically located if the state's licensing board does not conduct inspections as follows:

(I) an individual approved by the board who is not employed by the pharmacy but acting as a consultant to inspect the pharmacy;

(II) an agent of the National Association of Boards of Pharmacy;

(III) an agent of another State Board of Pharmacy; or

(IV) an agent of an accrediting body, such as the Joint Commission on Accreditation of Healthcare Organizations.

(ii) The inspection must be substantively equivalent to an inspection conducted by the board.

(3) On renewal of a license, the pharmacy shall complete the renewal application provided by the board and, as specified in §561.031 of the Act, provide an inspection report issued not more than three years before the date the renewal application is received and conducted by the pharmacy licensing board in the state of the pharmacy's physical location.

(A) A Class E pharmacy may submit an inspection report issued by an entity other than the pharmacy licensing board of the state in which the pharmacy is physically located if the state's licensing board does not conduct inspections as follows:

(i) an individual approved by the board who is not employed by the pharmacy but acting as a consultant to inspect the pharmacy;

(ii) an agent of the National Association of Boards of Pharmacy;

(iii) an agent of another State Board of Pharmacy; or

(iv) an agent of an accrediting body, such as the Joint Commission on Accreditation of Healthcare Organizations.

(B) The inspection must be substantively equivalent to an inspection conducted by the board.

(4) A Class E pharmacy which changes ownership shall notify the board within ten days of the change of ownership and apply for a new and separate license as specified in §291.4 of this title (relating to Change of Ownership).

(5) A Class E pharmacy which changes location and/or name shall notify the board within ten days of the change and file

for an amended license as specified in §291.2 of this title (relating to Change of Location and/or Name).

(6) A Class E pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within ten days of the change, following the procedures in §291.3 of this title (relating to Change of Managing Officers).

(7) A Class E pharmacy shall notify the board in writing within ten days of closing.

(8) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(9) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance and renewal of a license and the issuance of an amended license.

(10) The board may grant an exemption from the licensing requirements of this Act on the application of a pharmacy located in a state of the United States other than this state that restricts its dispensing of prescription drugs or devices to residents of this state to isolated transactions.

(11) A Class E pharmacy engaged in the centralized dispensing of prescription drug or medication orders shall comply with the provisions of §291.37 of this title (relating to Centralized Prescription Dispensing).

(12) A Class E pharmacy engaged in central processing of prescription drug or medication orders shall comply with the provisions of §291.38 of this title (relating to Central Prescription or Medication Order Processing).

(13) A Class E (Non-Resident) pharmacy engaged in the compounding of non-sterile pharmaceuticals shall comply with the provisions of §291.25 of this title (relating to Pharmacies Compounding Non-Sterile Pharmaceuticals).

(14) A Class E (Non-Resident) pharmacy engaged in the compounding of sterile pharmaceuticals shall comply with the provisions of §291.26 of this title (relating to Pharmacies Compounding Sterile Pharmaceuticals).

(b) Prescription dispensing and delivery.

(1) General.

(A) All prescription drugs and/or devices shall be dispensed and delivered safely and accurately as prescribed.

(B) The pharmacy shall maintain adequate storage or shipment containers and use shipping processes to ensure drug stability and potency. Such shipping processes shall include the use of packaging material and devices to ensure that the drug is maintained at an appropriate temperature range to maintain the integrity of the medication throughout the delivery process.

(C) The pharmacy shall utilize a delivery system which is designed to assure that the drugs are delivered to the appropriate patient.

(D) All Pharmacists shall exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order they dispense. If the pharmacist questions the accuracy or authenticity of a prescription drug order, he/she shall verify the order with the practitioner prior to dispensing.

(E) Prior to dispensing a prescription, pharmacists shall determine, in the exercise of sound professional judgment, that the pre-

scription is a valid prescription. A pharmacist may not dispense a prescription drug if the pharmacist knows or should have known that the prescription was issued on the basis of an Internet-based or telephonic consultation without a valid patient-practitioner relationship.

(F) Subparagraph (E) of this paragraph does not prohibit a pharmacist from dispensing a prescription when a valid patient-practitioner relationship is not present in an emergency situation (e.g. a practitioner taking calls for the patient's regular practitioner).

(2) Drug regimen review.

(A) For the purpose of promoting therapeutic appropriateness, a pharmacist shall prior to or at the time of dispensing a prescription drug order, review the patient's medication record. Such review shall at a minimum identify clinically significant:

- (i) inappropriate drug utilization;
- (ii) therapeutic duplication;
- (iii) drug-disease contraindications;
- (iv) drug-drug interactions;
- (v) incorrect drug dosage or duration of drug treatment;
- (vi) drug-allergy interactions; and
- (vii) clinical abuse/misuse.

(B) Upon identifying any clinically significant conditions, situations, or items listed in subparagraph (A) of this paragraph, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner. The pharmacist shall document such occurrences.

(3) Patient counseling and provision of drug information.

(A) To optimize drug therapy, a pharmacist shall communicate to the patient or the patient's agent, information about the prescription drug or device which in the exercise of the pharmacist's professional judgment the pharmacist deems significant, such as the following:

- (i) the name and description of the drug or device;
- (ii) dosage form, dosage, route of administration, and duration of drug therapy;
- (iii) special directions and precautions for preparation, administration, and use by the patient;
- (iv) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;
- (v) techniques for self monitoring of drug therapy;
- (vi) proper storage;
- (vii) refill information; and
- (viii) action to be taken in the event of a missed dose.

(B) Such communication:

- (i) shall be provided with each new prescription drug order;
- (ii) shall be provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent;

(iii) shall be communicated orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits such oral communication; and

(iv) shall be reinforced with written information. The following is applicable concerning this written information:

(I) Written information designed for the consumer, such as the USP DI patient information leaflets, shall be provided.

(II) When a compounded product is dispensed, information shall be provided for the major active ingredient(s), if available.

(III) For new drug entities, if no written information is initially available, the pharmacist is not required to provide information until such information is available, provided:

(-a-) the pharmacist informs the patient or the patient's agent that the product is a new drug entity and written information is not available.

(-b-) the pharmacist documents the fact that no written information was provided; and

(-c-) if the prescription is refilled after written information is available, such information is provided to the patient or patient's agent.

(C) Only a pharmacist may orally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs. Non-pharmacist personnel may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.

(D) If prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacy shall provide a toll-free telephone line which is answered during normal business hours to enable communication between the patient and a pharmacist.

(E) The pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container in both English and Spanish the local and toll-free telephone number of the pharmacy and the statement: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions at (insert the pharmacy's local and toll-free telephone numbers)."

(F) The provisions of this paragraph do not apply to patients in facilities where drugs are administered to patients by a person required to do so by the laws of the state (i.e., nursing homes).

(G) Upon delivery of a refill prescription, a pharmacist shall ensure that the patient or patient's agent is offered information about the refilled prescription and that a pharmacist is available to discuss the patient's prescription and provide information.

(H) Nothing in this subparagraph shall be construed as requiring a pharmacist to provide consultation when a patient or patient's agent refuses such consultation. The pharmacist shall document such refusal for consultation.

(c) Generic Substitution. Unless compliance would violate the pharmacy or drug laws or rules in the state in which the pharmacy is located:

(1) a pharmacist in a Class E pharmacy may dispense a generically equivalent drug product if:

(A) the generic product costs the patient less than the prescribed drug product;

(B) the patient does not refuse the substitution; and

(C) the prescribing practitioner authorizes the substitution of a generically equivalent product; or

(D) the practitioner or practitioner's agent does not clearly indicate that the oral or electronic prescription drug order shall be dispensed as ordered; and

(2) Pharmacists shall use as a basis for the determination of generic equivalency as defined in the Subchapter A, Chapter 562 of the Act, the following.

(A) For drugs listed in the publication, pharmacists shall use Approved Drug Products with Therapeutic Equivalence Evaluations (Orange Book) and current supplements published by the Federal Food and Drug Administration, within the limitations stipulated in that publication, to determine generic equivalency. Pharmacists may only substitute products that are rated therapeutically equivalent in the Orange Book and have an "A" rating. "A" rated drug products include but are not limited to, those designated AA, AB, AN, AO, AP, or AT in the Orange Book.

(B) For drugs not listed in the Orange Book, pharmacists shall use their professional judgment to determine generic equivalency.

(3) The pharmacy must include on the prescription order form completed by the patient or the patient's agent information that clearly and conspicuously:

(A) states that if a less expensive generically equivalent drug is available for the brand prescribed, the patient or the patient's agent may choose between the generically equivalent drug and the brand prescribed; and

(B) allows the patient or the patient's agent to indicate the choice of the generically equivalent drug or the brand prescribed.

(d) Therapeutic Drug Interchange. A switch to a drug providing a similar therapeutic response to the one prescribed shall not be made without prior approval of the prescribing practitioner. This subsection does not apply to generic substitution. For generic substitution, see the requirements of subsection (c) of this section.

(1) The patient shall be notified of the therapeutic drug interchange prior to, or upon delivery, of the dispensed prescription to the patient. Such notification shall include:

(A) a description of the change;

(B) the reason for the change;

(C) whom to notify with questions concerning the change; and

(D) instructions for return of the drug if not wanted by the patient.

(2) The pharmacy shall maintain documentation of patient notification of therapeutic drug interchange which shall include:

(A) the date of the notification;

(B) the method of notification;

(C) a description of the change; and

(D) the reason for the change.

(e) Transfer of Prescription Drug Order Information. Unless compliance would violate the pharmacy or drug laws or rules in the

state in which the pharmacy is located, a pharmacist in a Class E pharmacy may not refuse to transfer prescriptions to another pharmacy who is making the transfer request on behalf of the patient.

(f) Prescriptions for Schedule II controlled substances. Unless compliance would violate the pharmacy or drug laws or rules in the state in which the pharmacy is located, a pharmacist in a Class E pharmacy who dispenses a prescription for a Schedule II controlled substance issued on a Texas Official Prescription Form shall:

(1) mail a copy of the form to the Texas Department of Public Safety, Electronic Prescription Section, P.O. Box 4087, Austin, Texas 78773 within 30 days of dispensing; or

(2) electronically send the prescription information to the Texas Department of Public Safety per their requirements for electronic submissions within 30 days of dispensing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 295. PHARMACISTS

22 TAC §295.5, §295.7

The Texas State Board of Pharmacy adopts amendments to §295.5, concerning Pharmacist License or Renewal Fees and §295.7, concerning Pharmacist License Renewal. The amendments are adopted without changes to the proposed text as published in the December 9, 2005, issue of the *Texas Register* (30 TexReg 8267).

The amendments update the renewal fees required to renew an expired pharmacist license in accordance with amendments to §559.003 of the Texas Pharmacy Act and clarify the amount of the pharmacist license renewal fees.

No comments were received regarding the proposal.

The amendments are adopted under §§551.002, 554.051, and 559.003 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §559.003 as authorizing the agency to adopt rules regarding the renewal of a pharmacist license.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §295.6, §295.9

The Texas State Board of Pharmacy adopts new §295.6, concerning Emergency Temporary Pharmacist License and amendments to §295.9, concerning Inactive License. The new section and amendments are adopted without changes to the proposed text as published in the December 9, 2005, issue of the *Texas Register* (30 TexReg 8268).

The new §295.6 provides procedures and requirements for the Board to grant a pharmacist, who holds a license to practice pharmacy in another state, an emergency temporary pharmacist license to practice in Texas. The amendments to §295.9 provide procedures and requirements to allow Texas pharmacists whose licenses have been inactive for no more than two years to reactivate their license prior to obtaining the required continuing education during an emergency situation.

No comments were received regarding the proposal.

The new section and amendments are adopted under §§551.002, 554.051, and 558.155 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §558.155 as authorizing the agency to issue temporary pharmacist licenses.

The statutes affected by the new section and amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.11, 537.20, 537.28, 537.30 - 537.32, 537.37, 537.43, 537.44, 537.46, 537.47

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §§537.11, 537.20, 537.28, 537.30 - 537.32, 537.37, 537.43, 537.44, 537.46, and 537.47, concerning standard contract forms with changes to the proposed text and with changes to the forms adopted by reference as published in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8585). The amendments adopt by reference ten revised contract forms to be used by Texas real estate licensees.

The contract forms are published by TREC and available at the TREC web site (www.trec.state.tx.us) or at the Texas Real Estate Commission, P.O. Box 12188, 1101 Camino La Costa, Austin, TX 78711-2188. The date for mandatory use of the adopted contract forms is May 1, 2006; however, the forms may be used by licensees on a voluntary basis prior to that date. The changes to the text of the rule as proposed include deletion of two subparagraphs that reference an obsolete control number that is no longer used in the distribution of the promulgated contract forms. Changes were also made to the text of the contract forms in response to comments as described further below.

The revisions to the rules and forms as adopted do not change the nature or scope so much that they could be deemed different rules. The rules as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules as adopted do not impose more onerous requirements than the proposed versions and do not materially alter the issues raised in the proposed rules. Changes in the adopted rules and forms adopted by reference respond to public comments or otherwise reflect nonsubstantive variations from the proposed rules and forms to clarify their intent and improve style and readability.

Texas real estate licensees are generally required to use forms promulgated by TREC when negotiating contracts for the sale of real property. These forms are drafted by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and a public member appointed by the governor.

The amendments to §537.11 renumber the revised form promulgated by TREC and delete two subsections that reference obsolete control numbers.

The amendment to §537.20 adopts by reference Standard Contract Form TREC No. 9-6, Unimproved Contract Form. Paragraph 4A is reformatted to clarify that the contract is made subject to the approval of the property and if Paragraph 4A(2)(a) applies, the contract is also subject to the lender approving the buyer's financial condition pursuant to the Third Party Financing Condition Addendum. Paragraph 6C is reformatted by moving the provision related to the existing survey to Paragraph 6C(1) and by adding a sentence in Paragraph 6C(1) that clarifies that if the seller fails to deliver the existing survey or an acceptable affidavit to the buyer and title company within the time required, the buyer may obtain a new survey no later than three days before the closing date at the seller's expense. If the seller delivers the existing survey and affidavit within the time required, but it is not acceptable to the title company or lender, the parties negotiate (by checking the appropriate box for which party pays for a new, acceptable survey). Paragraph 6C(2) is revised

to add a sentence that the buyer is deemed to have received the survey on the date specified in Paragraph 6C(2) or the actual day he or she receives it, whichever date is earlier. The sentence in 6D regarding the time period under which the buyer must object is reformatted to make it clearer. Paragraph 6D is revised to clarify the provisions regarding buyer's right to object to any portion of the property lying in a special flood hazard area (Zone V or A) to parallel language in Federal Emergency Management Agency maps. Paragraph 6E is revised to add two notices. The notice under Paragraph 6E(6) is a statutorily required notice that a seller of property located in a certificated service area of a utility service provider must give to a buyer. The notice cautions the buyer that the property may be located in such a district and that special costs to obtain service may apply. The notice under Paragraph 6E(7) is a statutorily required notice that a seller of property in a public improvement district (PID) must provide to a buyer. The notice cautions the buyer that a PID may make special assessments against property in the PID. Paragraph 7A is reformatted to be consistent with other TREC contract forms. Paragraph 7E is revised regarding seller's disclosures about flooding of the property and environmental hazards or conditions. Paragraph 12 is revised to be consistent with other TREC contract forms. A sentence is added to paragraph 13 which provides that tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. Paragraph 18 is reformatted to clarify obligations of the parties related to the earnest money and to provide for additional incentives for prompt release of the earnest money. Paragraph 18C provides that upon termination of the contract, either party may send a release to the other party and the escrow agent and the parties will execute the appropriate documents and return them to the escrow agent. If one party makes demand on the escrow agent for the return of the earnest money, the escrow agent should send the demand to the other party. If the other party does not object within 15 days (shortened from 30 days), the escrow agent may disburse the earnest money to the demanding party. Paragraph 18D is added to provide that if a party wrongfully refuses or wrongfully fails to sign a release, the party entitled to the earnest money is entitled to liquidated damages of three times the amount of the earnest money. A line for e-mail addresses is added under Paragraphs 21 and 24, and to the Broker Information and Ratification of Fee Box on the last page. Paragraph 23 is modified to provide that the option fee may be paid within two days after the effective date of the contract. If the buyer fails to timely pay the option fee, the buyer will not have an option under the contract. Consideration supporting the option is in two parts: the option fee and nominal consideration, receipt of which is acknowledged. A box is placed around the effective date to call more attention to the brokers to complete the effective date upon final acceptance of the contract. The blanks for the parties' initials are deleted from the signature page. The seller's receipt of the option fee on the last page is clarified so that the listing broker may acknowledge receipt of the option fee for a proper tendering of the fee.

The amendment to §537.28 adopts by reference Standard Contract Form TREC No. 20-7, One to Four Family Residential Contract (Resale). The form is revised to bold the phrase in Paragraph 2B to further emphasize that the list of items in Paragraph 2B are those items that are permanently installed or built in. Paragraph 4A is reformatted to clarify that the contract is made subject to the approval of the property and if Paragraph 4A(2)(a) applies, the contract is also subject to the lender approving the buyer's financial condition pursuant to the Third Party Financing Condition Addendum. Paragraph 6C is reformatted by moving

the provision related to the existing survey to Paragraph 6C(1) and by adding a sentence in Paragraph 6C(1) that clarifies that if the seller fails to deliver the existing survey or an acceptable affidavit to the buyer and title company within the time required, the buyer may obtain a new survey no later than three days before the closing date at the seller's expense. If the seller delivers the existing survey and affidavit within the time required, but it is not acceptable to the title company or lender, the parties negotiate (by checking the appropriate box for which party pays for a new, acceptable survey). Paragraph 6C(2) is revised to add a sentence that the buyer is deemed to have received the survey on the date specified in Paragraph 6C(2) or the actual day he or she receives it, whichever date is earlier. The sentence in 6D regarding the time period under which the buyer must object is reformatted to make it clearer. Paragraph 6E is revised to add two notices. The notice under Paragraph 6E(6) is a statutorily required notice that a seller of property located in a certificated service area of a utility service provider must give to a buyer. The notice cautions the buyer that the property may be located in such a district and that special costs to obtain service may apply. The notice under Paragraph 6E(7) is a statutorily required notice that a seller of property in a public improvement district (PID) must provide to a buyer. The notice cautions the buyer that a PID may make special assessments against property in the PID. Paragraph 7A is reformatted to be consistent with other TREC contract forms. Paragraph 12 is revised to be consistent with other TREC contract forms. A sentence is added to paragraph 13 which provides that tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. Paragraph 18 is reformatted to clarify obligations of the parties related to the earnest money and to provide for additional incentives for prompt release of the earnest money. Paragraph 18 provides that upon termination of the contract, either party may send a release to the other party and the escrow agent and the parties will execute the appropriate documents and return them to the escrow agent. If one party makes demand on the escrow agent for the return of the earnest money, the escrow agent should send the demand to the other party. If the other party does not object within 15 days (shortened from 30 days), the escrow agent may disburse the earnest money to the demanding party. Paragraph 18D is added to provide that if a party wrongfully refuses or wrongfully fails to sign a release, the party entitled to the earnest money is entitled to liquidated damages of three times the amount of the earnest money. A line for e-mail addresses is added under Paragraphs 21 and 24, and to the Broker Information and Ratification of Fee Box on the last page. Paragraph 23 is modified to provide that the option fee may be paid within two days after the effective date of the contract. If the buyer fails to timely pay the option fee, the buyer will not have an option under the contract. Consideration supporting the option is in two parts: the option fee and nominal consideration, receipt of which is acknowledged. A box is placed around the effective date to call more attention to the brokers to complete the effective date upon final acceptance of the contract. The blanks for the parties' initials are deleted from the signature page. The seller's receipt of the option fee on the last page is clarified so that the listing broker may acknowledge receipt of the option fee for a proper tendering of the fee.

The amendment to §537.30 adopts by reference Standard Contract Form TREC No. 23-6, New Home Contract (Incomplete Construction). The amendment to §537.31 adopts by reference Standard Contract Form TREC No. 24-6, New Home Contract (Complete Construction). Paragraph 4A of both forms is reformatted to clarify that the contract is made subject to the approval

of the property and if Paragraph 4A(2)(a) applies, the contract is also subject to the lender approving the buyer's financial condition pursuant to the Third Party Financing Condition Addendum. Paragraph 6C of Form No. 24-6 is reformatted by moving the provision related to the existing survey to Paragraph 6C(1) and by adding a sentence in Paragraph 6C(1) that clarifies that if the seller fails to deliver the existing survey or an acceptable affidavit to the buyer and title company within the time required, the buyer may obtain a new survey no later than three days before the closing date at the seller's expense. If the seller delivers the existing survey and affidavit within the time required, but it is not acceptable to the title company or lender, the parties negotiate (by checking the appropriate box for which party pays for a new, acceptable survey). Paragraph 6C(2) is revised to add a sentence that the buyer is deemed to have received the survey on the date specified in Paragraph 6C(2) or the actual day he or she receives it, whichever date is earlier. The sentence in 6D regarding the time period under which the buyer must object is reformatted to make it clearer. Paragraph 6E is revised to add two notices. The notice under Paragraph 6E(6) is a statutorily required notice that a seller of property located in a certificated service area of a utility service provider must give to a buyer. The notice cautions the buyer that the property may be located in such a district and that special costs to obtain service may apply. The notice under Paragraph 6E(7) is a statutorily required notice that a seller of property in a public improvement district (PID) must provide to a buyer. The notice cautions the buyer that a PID may make special assessments against property in the PID. Paragraph 7A is reformatted to be consistent with other TREC contract forms. Paragraph 7D is revised to include a checkbox to indicate whether the insulation specifications are attached. Paragraph 12 is revised to be consistent with other TREC contract forms. A sentence is added to paragraph 13 which provides that tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. Paragraph 18 is reformatted to clarify obligations of the parties related to the earnest money and to provide for additional incentives for prompt release of the earnest money. Paragraph 18C provides that upon termination of the contract, either party may send a release to the other party and the escrow agent and the parties will execute the appropriate documents and return them to the escrow agent. If one party makes demand on the escrow agent for the return of the earnest money, the escrow agent should send the demand to the other party. If the other party does not object within 15 days (shortened from 30 days), the escrow agent may disburse the earnest money to the demanding party. Paragraph 18D is added to provide that if a party wrongfully refuses or wrongfully fails to sign a release, the party entitled to the earnest money is entitled to liquidated damages of three times the amount of the earnest money. A line for e-mail addresses is added under Paragraphs 21 and 24, and to the Broker Information and Ratification of Fee Box on the last page. Paragraph 23 is modified to provide that the option fee may be paid within two days after the effective date of the contract. If the buyer fails to timely pay the option fee, the buyer will not have an option under the contract. Consideration supporting the option is in two parts: the option fee and nominal consideration, receipt of which is acknowledged. A box is placed around the effective date to call more attention to the brokers to complete the effective date upon final acceptance of the contract. The notice required by Chapter 27 of the Texas Property Code adjacent to the signature lines is revised to reflect the current statutory language. The blanks for the parties' initials are deleted from the signature page. The seller's receipt of the op-

tion fee on the last page is clarified so that the listing broker may acknowledge receipt of the option fee for a proper tendering of the fee.

The amendment to §537.32 adopts by reference Standard Contract Form TREC No. 25-5 Farm and Ranch Contract. The form is revised to bold the phrases in Paragraph 2B(1) and (2) to further emphasize that the list of items in Paragraph 2B are those items that are permanently installed or built in. Paragraph 4A is reformatted to clarify that the contract is made subject to the approval of the property and if Paragraph 4A(2)(a) applies, the contract is also subject to the lender approving the buyer's financial condition pursuant to the Third Party Financing Condition Addendum. Paragraph 6C is revised to rearrange the check boxes for consistency with other TREC contract forms. Paragraph 6C(2) is revised to add a sentence that the buyer is deemed to have received the survey on the date specified in Paragraph 6C(2) or the actual day he or she receives it, whichever date is earlier. The sentence in 6D regarding the time period under which the buyer must object is reformatted to make it clearer. Paragraph 6D is revised to clarify the provisions regarding buyer's right to object to any portion of the property lying in a special flood hazard area (Zone V or A) to parallel language in Federal Emergency Management Agency maps. Paragraph 6G is revised to add two notices. The notice under Paragraph 6G(5) is a statutorily required notice that a seller of property located in a certificated service area of a utility service provider must give to a buyer. The notice cautions the buyer that the property may be located in such a district and that special costs to obtain service may apply. The notice under Paragraph 6G(6) is a statutorily required notice that a seller of property in a public improvement district (PID) must provide to a buyer. The notice cautions the buyer that a PID may make special assessments against property in the PID. Paragraph 7A is reformatted to be consistent with other TREC contract forms. Paragraph 12 is revised to be consistent with other TREC contract forms. A sentence is added to paragraph 13 which provides that tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. Paragraph 18 is reformatted to clarify obligations of the parties related to the earnest money and to provide for additional incentives for prompt release of the earnest money. Paragraph 18C provides that upon termination of the contract, either party may send a release to the other party and the escrow agent and the parties will execute the appropriate documents and return them to the escrow agent. If one party makes demand on the escrow agent for the return of the earnest money, the escrow agent should send the demand to the other party. If the other party does not object within 15 days (shortened from 30 days), the escrow agent may disburse the earnest money to the demanding party. Paragraph 18D is added to provide that if a party wrongfully refuses or wrongfully fails to sign a release, the party entitled to the earnest money is entitled to liquidated damages of three times the amount of the earnest money. A line for e-mail addresses is added under Paragraphs 21 and 24, and to the Broker Information and Ratification of Fee Box on the last page. Paragraph 23 is modified to provide that the option fee may be paid within two days after the effective date of the contract. If the buyer fails to timely pay the option fee, the buyer will not have an option under the contract. Consideration supporting the option is in two parts: the option fee and nominal consideration, receipt of which is acknowledged. A box is placed around the effective date to call more attention to the brokers to complete the effective date upon final acceptance of the contract. The blanks for the parties' initials are deleted from the signature page. The seller's receipt of the option fee on the

last page is clarified so that the listing broker may acknowledge receipt of the option fee for a proper tendering of the fee.

The amendment to §537.37 adopts by reference Standard Contract Form TREC No. 30-5, Residential Condominium Contract (Resale). The form is revised to bold the phrase in Paragraph 2B to further emphasize that the list of items in Paragraph 2B are those items that are permanently installed or built in. Paragraph 4A is reformatted to clarify that the contract is made subject to the approval of the property and if Paragraph 4A(2)(a) applies, the contract is also subject to the lender approving the buyer's financial condition pursuant to the Third Party Financing Condition Addendum. The sentence in 6D regarding the time period under which the buyer must object is reformatted to make it clearer. Paragraph 6E is revised to add a notice as 6E(5) which is a statutorily required notice that a seller of property located in a certificated service area of a utility service provider must give to a buyer. The notice cautions the buyer that the property may be located in such a district and that special costs to obtain service may apply. Paragraph 7A is reformatted to be consistent with other TREC contract forms. Paragraph 12 is revised to be consistent with other TREC contract forms; paragraph 12A is revised to conform to similar provisions in other TREC forms. A sentence is added to paragraph 13 which provides that tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. Paragraph 18 is reformatted to clarify obligations of the parties related to the earnest money and to provide for additional incentives for prompt release of the earnest money. Paragraph 18C provides that upon termination of the contract, either party may send a release to the other party and the escrow agent and the parties will execute the appropriate documents and return them to the escrow agent. If one party makes demand on the escrow agent for the return of the earnest money, the escrow agent should send the demand to the other party. If the other party does not object within 15 days (shortened from 30 days), the escrow agent may disburse the earnest money to the demanding party. Paragraph 18D is added to provide that if a party wrongfully refuses or wrongfully fails to sign a release, the party entitled to the earnest money is entitled to liquidated damages of three times the amount of the earnest money. A line for e-mail addresses is added under Paragraphs 21 and 24, and to the Broker Information and Ratification of Fee Box on the last page. Paragraph 23 is modified to provide that the option fee may be paid within two days after the effective date of the contract. If the buyer fails to timely pay the option fee, the buyer will not have an option under the contract. Consideration supporting the option is in two parts: the option fee and nominal consideration, receipt of which is acknowledged. A box is placed around the effective date to call more attention to the brokers to complete the effective date upon final acceptance of the contract. The blanks for the parties' initials are deleted from the signature page. The seller's receipt of the option fee on the last page is clarified so that the listing broker may acknowledge receipt of the option fee for a proper tendering of the fee.

The amendment to §537.43 adopts by reference Standard Contract Form TREC No. 36-4, Addendum for Property Subject to Mandatory Membership in an Owners' Association. The form is revised to delete the requirement in Paragraph A that the Subdivision Information not be more than three months as such is not required by the statute. Paragraph B is modified to change the title to "Fees" rather than "Transfer Fees" and to provide that the buyer will pay a certain amount of any fees resulting from the transfer and the seller will pay the remainder. The revisions will

clarify that the fees at issue in the paragraph include any Owners' Association fees resulting from the transfer, which may also include initiation or other fees.

The amendment to §537.44 adopts by reference Standard Contract Form TREC No. 37-2, Subdivision Information, Including Resale Certificate for Property Subject to Mandatory Membership in an Owners' Association. Paragraph K is revised to conform to similar provisions in other TREC forms and a line for an e-mail address is included for the managing agent of the subdivision.

The amendment to §537.46 adopts by reference Standard Contract Form TREC No. 39-6, Amendment. In Paragraph 6, the word "nonrefundable" is struck before the word "Option." A bold box is added around the execution date of the amendment to call the licensee's attention to the need to complete the date.

The amendment to §537.47 adopts by reference Standard Contract Form TREC No. 40-2, Third Party Financing Condition Addendum. The form is revised to include a provision concerning availability of the described loan terms to the definition of financing approval. Specifically, financing approval is obtained when the terms of the described loan are available; and the lender determines that the buyer has met the lender's financial requirements (creditworthiness, assets and income). This clarifies that the buyer may terminate the contract under the addendum, within the time specified in the addendum, if the described loan terms are not available (for example, interest rate increase over the stated amount). A note was added to the first paragraph to clarify that financing approval under the addendum does not include approval of the property.

Drafts of the contract forms were released for comment and displayed on the TREC web site during the notice and comment period after posting in the *Texas Register*. Approximately 47 comments were received and considered by the commission during this period, and several changes were made in the drafts as a result of the comments. The Metrotex Association of Realtors, the Houston Center for Independent Living, and the San Antonio Board of Realtors commented on the proposed forms.

The commission made typographical corrections to the forms adopted by reference and made other changes to the text of the forms in response to comments and further review and recommendation by the Broker Lawyer Committee. The following changes were made in response to comments: In all the contract forms except for the Residential Condominium form, the sentence regarding the date in which the buyer is deemed to receive the survey is moved from paragraph 6D to paragraph 6C(2); the sentence in paragraph 6D in all the contract forms regarding the time period under which the buyer must object is reformatted to make it clearer; paragraph 7D in Form Nos. 23-6 and 24-6 is revised to include a checkbox to indicate whether the insulation specifications are attached; paragraph 12A in Form No. 30-5 is revised to conform to similar provisions in other TREC forms; paragraph K in Form No. 37-2, Subdivision Information, Including Resale Certificate for Property Subject to Mandatory Membership in an Owners' Association, is revised to conform to similar provisions in other TREC forms; the last page of the contract form is rearranged for clarity and to include additional lines for addresses; an obsolete control number is removed from all forms; and the page number format is revised in all forms. A number of comments did not result in changes to the text of the forms. All comments regarding this adoption, including any not specifically referenced herein, were fully considered by the commission.

The comments and commission responses to those comments are summarized as follows.

Comment: One commenter suggested that the seller's disclosure should be revised to include a statement that reveals whether the seller holds a real estate license.

Response: The commission notes that the Seller's Disclosure Form is not currently under consideration. The commission will consider this comment if it decides to revise the Seller's Disclosure Form in the future.

Comment: One commenter recommended that the commission include a deemed objection of Schedule C items in paragraph 6 so that a buyer can recover earnest money and additional costs in cases where the seller fails to cure Schedule C items. The commenter believes that the remedies in the default paragraph are insufficient to compensate buyer in such cases.

Response: The commission respectfully disagrees and believes that the remedies in the default paragraph are sufficient to address the commenter's concerns in cases where the seller fails to timely cure Schedule C items.

Comment: Several commenters recommended that there should not be a two-day period in which to deliver the option fee in paragraph 23, that the term "nominal" should be deleted, and questioned whether a buyer may terminate within the two-day period never having tendered the option fee.

Response: The commission respectfully disagrees and believes that the best interest of the public is served by providing for a two day period after the effective date of the contract in which to deliver the option fee. Please note, however, a buyer cannot terminate under the option paragraph in that two-day period if the buyer has not paid the option fee. The buyer may terminate during that period only if he or she also pays the option fee.

Comment: Several commenters suggested that various items such as bathroom mirrors, playsets, and chandelier shades should be added, and satellite controls should be deleted in paragraph 2C as accessories.

Response: The commission respectfully disagrees and believes that the best interest of the public is served with the current list of accessories in paragraph 2C.

Comment: Two commenters suggested that additional lines for the broker's city, state and zip should be included on the last page of the contract forms.

Response: The commission agrees and has revised the forms accordingly.

Comment: One commenter requested that the Third Party Financing Condition Addendum should ask whether buyer's financing is contingent upon the sale of another property.

Response: The commission respectfully disagrees and believes that the best interest of the public is served by not requesting such information in the addendum.

Comment: Several commenters requested that the checkbox that indicates that the buyer does not require delivery of the Subdivision Information should be put back into Form No. 36-4, Subdivision Information, Including Resale Certificate for Property Subject to Mandatory Membership in an Owners' Association.

Response: The commission agrees and has revised the form accordingly.

Comment: Several commenters suggested adding a line in the contract to require a response time from the seller.

Response: The commission respectfully disagrees and believes that the best interest of the public is served by not requesting such information in the forms.

Comment: One commenter suggested that the text of paragraph 20 regarding an affidavit stating that the seller is not a foreign person should be revised to not require an affidavit but to include a statement regarding perjury.

Response: The commission respectfully disagrees and believes that the best interest of the public is served by not changing paragraph 20.

Comment: One commenter suggested revising the list of addenda in paragraph 22 to put the most important ones first.

Response: The commission respectfully disagrees as the relative degree of importance is subjective.

Comment: One commenter suggested that paragraph 5 regarding earnest money should stipulate an exact number of days in which to tender the earnest money; that seller should be responsible for the cost of providing a copy of restrictive covenants rather than permitting the parties to negotiate who pays; that the buyer should be responsible for paying for the survey rather than permitting the parties to negotiate who pays; that the cost of turning on the utilities should be a buyer's expense under paragraph 7 rather than a seller's expense; that paragraph 7H regarding Residential Service Contracts should be rewritten; that paragraph 12 should be rewritten; and that the Third Party Financing Condition Addendum should be rewritten to provide that the buyer will be in default if he fails to timely provide a notice that he cannot obtain financing approval.

Response: The commission respectfully disagrees and believes that the best interest of the public is served by not revising the forms as suggested by the commenter. In each case, the commission believes that it is more appropriate to give the parties as much flexibility as possible to negotiate who pays for various expenses related to the transaction. Regarding the commenter's suggestions to rewrite various paragraphs, the commission believes that the paragraphs as written are sufficiently clear.

Comment: One commenter suggested various non-substantive formatting, punctuation, grammar, and typographical revisions to the forms.

Response: The commission respectfully disagrees with the suggestions.

Comment: One commenter suggested that the commission change the term "may" to "shall" in paragraph 18C to require the escrow agent to disburse the earnest money to the person making the demand if there is no written objection.

Response: The commission respectfully disagrees as the escrow agent is not a party to the contract and is therefore not bound by mandatory terms of the contract.

Comment: One commenter suggested that paragraph 13 should be revised to require the seller to provide the buyer and title company with a copy of any increase in tax notification to calculate tax proration accordingly.

Response: The commission respectfully disagrees and believes that the best interest of the public is served with the new sentence in paragraph 13 which provides that tax proration may be

calculated taking into consideration any change in exemptions that will affect the current year's taxes.

Comment: One commenter suggested revising the lists of accessories and improvements in paragraph 2 to include disability features to indicate whether such features are present on the property. The commenter also suggested revising the Seller's Disclosure Form and temporary lease forms to disclose whether such features are present. At a meeting of the Broker Lawyer Committee, the commenter offered to provide to the Broker Lawyer Committee a draft "Disability Features Addendum" for consideration by the commission at a future date.

Response: The commission respectfully disagrees with the commenter's suggestion to revise paragraph 2 as the improvements and accessories subparagraphs are not a recitation of current improvements or accessories conveyed with the property. They are merely a non-exhaustive list of improvements and accessories that may usually be found in that type of property. Note that subparagraph 2B includes the phrases "All fixtures and improvements" and "if any." Thus, even if grab bars and ramps were added to the list that would not mean that the features were present on the property under contract. In the current and proposed forms, parties are free to use paragraph 11 or paragraph 7 to insert relevant information regarding disability features. The Seller's Disclosure Form and the temporary lease forms are not currently under consideration. The commission will consider the comments regarding such forms if it decides to revise the forms in the future.

Comment: One commenter suggested that the contract forms should have a default time period where there is a blank to be filled in with a set number of days. Also, when the effective date is not filled in, the effective date should be the date the earnest money is received by the escrow agent. The commenter also suggested a default delivery address to the agent if the parties neglect to fill in paragraph 21 regarding delivery addresses.

Response: The commission respectfully disagrees and believes that the best interest of the public is served without the suggested revisions regarding default time periods and delivery addresses as it is more appropriate to give the parties as much flexibility as possible to negotiate such terms.

Comment: One comment suggested revising Form No. 37-2, Subdivision Information, Including Resale Certificate for Property Subject to Mandatory Membership in an Owners' Association, to state the cost of the Resale Certificate and whether the fee has already been paid.

Response: The commission respectfully disagrees because seller pays for the cost of providing the Subdivision Information under Form No. 36-4, Addendum for Property Subject to Mandatory Membership in an Owners' Association; therefore, information regarding the cost and whether it has been paid is not relevant.

Comment: One commenter noted that language in paragraph 6E2 appears to be redundant with language in paragraph 6B regarding restrictive covenants and suggests removing the statement in paragraph 6E2.

Response: The commission respectfully disagrees as the text of the notice in paragraph 6E(2) is required by statute to be given from the seller to the buyer and is not inconsistent with the promises that the seller makes to deliver certain documents in paragraph 6B.

Comment: Some commenters expressed concerns that the revisions in paragraph 18 give too much authority to the escrow agent to determine whether a party wrongfully fails or refuses to sign a release.

Response: The commission notes that the escrow agent does not decide whether a party has wrongfully failed or refused to release earnest money. The new liquidated damage clause in paragraph 18 allows a party to obtain additional damages if a lawsuit is filed regarding the transaction.

Comment: One commenter suggested changing the new language in the Third Party Financing Condition Addendum to require rather than permit the buyer to give written notice to the seller within a negotiated number of days that the buyer cannot obtain financing approval.

Response: The commission respectfully disagrees and believes that the best interest of the public is served without the suggested revision. The notice is meant to be permissive as failure to timely give the notice is provided for in the addendum such that the contract will not longer be subject to financing approval. If the buyer gives timely notice, the contract will terminate and the earnest money will be refunded to the buyer.

Comment: One commenter pointed out a typographical error in the public improvement district notice in paragraph 6.

Response: The commission acknowledges the error and has revised the forms accordingly.

Comment: One commenter suggested that the commission modify paragraph 9 in Form No. 39-6, Amendment, to mirror the language in paragraph 11 of the contract forms.

Response: The commission respectfully disagrees and believes that the best interest of the public is served without the suggested revision as paragraph 9 in the Amendment Form serves multiple purposes other than modification of paragraph 11.

Comment: One commenter suggested that the commission further modify paragraph 18D to provide for "release of earnest money" to mirror the Texas Association of Realtors (TAR) form entitled "Termination of Contract and Release of Earnest Money."

Response: The commission respectfully disagrees and believes that the best interest of the public is served without the suggested revisions as not all persons have access to the TAR form and other types of releases can be used by the parties.

Comment: One commenter suggested revising paragraph 6E(7) regarding public improvement districts (PIDs) to make it clear to the buyer that the property is located in a PID and that the buyer will pay an assessment.

Response: The commission respectfully disagrees and believes that the paragraph as revised recites the appropriate notice as required by section 5.014 of the Property Code. Further, it is uncertain how the seller can determine whether the property is in fact located in a PID as there are very few PIDs in existence at this time.

Comment: One commenter suggested that paragraph 6 regarding the parties' agreement as to who pays for the survey under various circumstances continues to be ambiguous and suggests a revision to require that the seller pay for the survey in all cases.

Response: The commission respectfully disagrees and believes that the best interest of the public is served without the suggested revisions as the current draft permits the appropriate flexibility for

the parties to negotiate who pays for the survey under various circumstances.

Comment: One commenter suggested a new paragraph in all forms disclosing whether and what type of mineral rights are conveyed with the property.

Response: The commission appreciates the suggestion. However, given that a mineral rights paragraph or addendum requires additional research and major changes to the forms, the commission will consider the suggestion in future revisions of the forms.

Comment: One commenter suggested putting the names of all forms, the form numbers and page numbers on the bottom of each form promulgated by the commission.

Response: The commission respectfully disagrees as there is insufficient space at the bottom of the forms to add the name and page number because the space is currently used for initials of the parties and for licensees or companies to print their name and other identifying information outside the margins on pre-printed forms. The form number is currently on the bottom right hand side of the form and the page numbers are on the top of the form.

Comment: Several commenters recommended that a paragraph be added to the form regarding "evidence of presentation" to provide evidence of the date and time the offer is presented.

Response: The commission respectfully disagrees and believes that the best interest of the public is served without the suggested revisions regarding evidence of presentation as such information is not essential to the transaction.

Comment: One commenter suggested that check boxes should be added to paragraph 6A(8) to note whether the buyer elects coverage to have the exception amended to read "shortages in area" to alert the title company.

Response: The commission respectfully disagrees because to include such information would introduce complex issues on the contract form that are more appropriately discussed directly between the title company and the buyer.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

§537.11. Use of Standard Contract Forms.

(a) Standard Contract Form TREC No. 9-6 is promulgated for use in the sale of unimproved property where intended use is for one to four family residences. Standard Contract Form TREC No. 10-4 is promulgated for use as an addendum concerning sale of other property by a buyer to be attached to promulgated forms of contracts. Standard Contract Form TREC No. 11-5 is promulgated for use as an addendum to be attached to promulgated forms of contracts which are second or "back-up" contracts. Standard Contract Form TREC No. 12-1 is promulgated for use as an addendum to be attached to promulgated forms of contracts where there is a Veterans Administration release of liability or restoration entitlement. Standard Contract Form TREC No. 15-3 is promulgated for use as a residential lease when a seller temporarily occupies property after closing. Standard Contract Form TREC No. 16-3 is promulgated for use as a residential lease when a buyer temporarily

occupies property prior to closing. Standard Contract Form 20-7 is promulgated for use in the resale of residential real estate. Standard Contract Form TREC No. 23-6 is promulgated for use in the sale of a new home where construction is incomplete. Standard Contract Form TREC No. 24-6 is promulgated for use in the sale of a new home where construction is completed. Standard Contract Form TREC No. 25-5 is promulgated for use in the sale of a farm or ranch. Standard Contract Form TREC No. 26-4 is promulgated for use as an addendum concerning seller financing. Standard Contract Form TREC No. 28-0 is promulgated for use as an addendum to be attached to promulgated forms of contracts where reports are to be obtained relating to environmental assessments, threatened or endangered species, or wetlands. Standard Contract Form TREC No. 30-5 is promulgated for use in the resale of a residential condominium unit. Standard Contract Form TREC No. 32-0 is promulgated for use as a condominium resale certificate. Standard Contract Form TREC No. 33-0 is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property adjoining and sharing a common boundary with the tidally influenced submerged lands of the state. Standard Contract Form TREC Form No. 34-1 is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property located seaward of the Gulf Intracoastal Waterway. Standard Contract Form TREC Form No. 36-4 is promulgated for use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association. Standard Contract Form TREC Form No. 37-2 is promulgated for use as a resale certificate when the property is subject to mandatory membership in an owners' association. Standard Contract Form TREC Form No. 38-1 is promulgated for use as a notice of termination of contract. Standard Contract Form TREC Form No. 39-6 is promulgated for use as an amendment to promulgated forms of contracts. TREC Form No. 40-2 is promulgated for use as an addendum to be added to promulgated forms of contracts when there is a condition for third party financing. TREC Form No. 41-0 is promulgated for use as an addendum to be added to promulgated forms of contracts when there is an assumption of a loan. TREC Form No. 42-0 is promulgated for use as a notice that buyer cannot obtain financing pursuant to the Third Party Financing Condition Addendum.

(b) When negotiating contracts binding the sale, exchange, option, lease or rental of any interest in real property, a real estate licensee shall use only those contract forms promulgated by the Texas Real Estate Commission for that kind of transaction with the following exceptions:

- (1) transactions in which the licensee is functioning solely as a principal, not as an agent;
- (2) transactions in which an agency of the United States government requires a different form to be used;
- (3) transactions for which a contract form has been prepared by the property owner or prepared by an attorney and required by the property owner;
- (4) transactions for which no standard contract form has been promulgated by the Texas Real Estate Commission, and the licensee uses a form prepared by an attorney at law licensed by this state and approved by the attorney for the particular kind of transactions involved or prepared by the Texas Real Estate Broker-Lawyer Committee and made available for trial use by licensees with the consent of the Texas Real Estate Commission.

(c) A licensee may not practice law, offer, give nor attempt to give advice, directly or indirectly; the licensee may not act as a public conveyancer nor give advice or opinions as to the legal effect of any contracts or other such instruments which may affect the title to real estate; the licensee may not give opinions concerning the status or va-

lidity of title to real estate; and the licensee may not attempt to prevent nor in any manner whatsoever discourage any principal to a real estate transaction from employing a lawyer. However, nothing herein shall be deemed to limit the licensee's fiduciary obligation to disclose to the licensee's principals all pertinent facts which are within the knowledge of the licensee, including such facts which might affect the status of or title to real estate.

(d) A licensee may not undertake to draw or prepare documents fixing and defining the legal rights of the principals to a transaction. In negotiating real estate transactions, the licensee may fill in forms for such transactions, using exclusively forms which have been approved and promulgated by the Texas Real Estate Commission or such forms as are otherwise permitted by these rules. When filling in such a form, the licensee may only fill in the blanks provided and may not add to or strike matter from such form, except that licensees shall add factual statements and business details desired by the principals and shall strike only such matter as is desired by the principals and as is necessary to conform the instrument to the intent of the parties. A licensee may not add to a promulgated earnest money contract form factual statements or business details for which a contract addendum, lease or other form has been promulgated by the commission for mandatory use. Nothing herein shall be deemed to prevent the licensee from explaining to the principals the meaning of the factual statements and business details contained in the said instrument so long as the licensee does not offer or give legal advice. It is not the practice of law as defined in this Act for a real estate licensee to complete a contract form which is either promulgated by the Texas Real Estate Commission or prepared by the Texas Real Estate Broker-Lawyer Committee and made available for trial use by licensees with the consent of the Texas Real Estate Commission. Contract forms prepared by the Texas Real Estate Broker-Lawyer Committee for trial use may be used on a voluntary basis after being approved by the commission. Contract forms prepared by the Texas Real Estate Broker-Lawyer Committee and approved by the commission to replace previously promulgated forms may be used by licensees on a voluntary basis prior to the effective date of rules requiring use of the replacement forms.

(e) Where it appears that, prior to the execution of any such instrument, there are unusual matters involved in the transaction which should be resolved by legal counsel before the instrument is executed or that the instrument is to be acknowledged and filed for record, the licensee shall advise the principals that each should consult a lawyer of the principal's choice before executing same.

(f) A licensee may not employ, directly or indirectly, a lawyer nor pay for the services of a lawyer to represent any principal to a real estate transaction in which the licensee is acting as an agent. The licensee may employ and pay for the services of a lawyer to represent only the licensee in a real estate transaction, including preparation of the contract, agreement, or other legal instruments to be executed by the principals to the transactions.

(g) A licensee shall advise the principals that the instrument they are about to execute is binding on them.

(h) Forms approved or promulgated by the commission may be reproduced only from the following sources:

- (1) numbered copies obtained from the commission, whether in a printed format or electronically reproduced from the files available on the commission's Internet site;
- (2) printed copies made from copies obtained from the commission;
- (3) legible photocopies made from such copies; or

- (4) computer-driven printers following these guidelines.

(A) The computer file or program containing the form text must not allow the end-user direct access to the text of the form and may only permit the user to insert language in blanks in the forms or to strike through language at the direction of the parties to the contract.

(B) Typefaces or fonts must appear to be identical to those used by the commission in printed copies of the particular form.

(C) The text and number of pages must be identical to that used by the commission in printed copies of the particular form.

(D) The spacing, length of blanks, borders and placement of text on the page must appear to be identical to that used by the commission in printed copies of the form.

(E) The name and address of the person or firm responsible for developing the software program must be legibly printed below the border at the bottom of each page in no less than six point type and in no larger than 10 point type.

(i) Forms approved or promulgated by the commission must be reproduced on the same size of paper used by the commission with the following changes or additions only.

(1) The business name or logo of a broker, organization or printer may appear at the top of a form outside the border.

(2) The broker's name may be inserted in any blank provided for that purpose.

§537.20. Standard Contract Form TREC No. 9-6.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 9-6 approved by the Texas Real Estate Commission in 2005. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.28. Standard Contract Form TREC No. 20-7.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 20-7 approved by the Texas Real Estate Commission in 2005. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.30. Standard Contract Form TREC No. 23-6.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 23-6 approved by the Texas Real Estate Commission in 2005. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.31. Standard Contract Form TREC No. 24-6.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 24-6 approved by the Texas Real Estate Commission in 2005. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.32. Standard Contract Form TREC No. 25-5.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 25-5 approved by the Texas Real Estate Commission in 2005. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.37. Standard Contract Form TREC No. 30-5.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 30-5 approved by the Texas Real Estate Commission in 2005. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.43. Standard Contract Form TREC No. 36-4.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 36-4 approved by the Texas Real Estate Commission in 2005. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.44. Standard Contract Form TREC No. 37-2.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 37-2 approved by the Texas Real Estate Commission in 2005. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.46. Standard Contract Form TREC No. 39-6.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 39-6 approved by the Texas Real Estate Commission in 2005. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.47. Standard Contract Form TREC No. 40-2.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 40-2 approved by the Texas Real Estate Commission in 2005. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2006.

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Loretta R. DeHay

General Counsel

Texas Real Estate Commission

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Proposal publication date: December 23, 2005

For further information, please call: (512) 465-3900



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING

SUBCHAPTER B. COASTAL EROSION PLANNING AND RESPONSE

31 TAC §15.41, §15.42

The Texas General Land Office (Land Office) adopts amendments to 31 TAC Part 1, Chapter 15, relating to Coastal Area Planning, §15.41, relating to Evaluation Process for Coastal

Erosion Studies and Projects and §15.42, relating to Funding Projects From the Coastal Erosion Response Account. The amendments are adopted without changes to the proposed text as published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8823) and the text will not be republished.

The amendments are adopted pursuant to the Coastal Erosion Planning and Response Act (CEPRA), Texas Natural Resources Code, Chapter 33, Subchapter H, §§33.601 - 33.612. The CEPRA requires the Land Office to implement a program of coastal erosion avoidance, remediation, and planning. Senate Bill 517, 79th Legislature, Regular Session amended §33.603, Texas Natural Resources Code, by amending subsections (b) and (d) and adding subsection (g), to authorize the use of CEPRA funds for projects including hard structures such as: (1) construction or retrofitting of dams, jetties, groins, and other impoundment structures, provided that the structures include sediment bypass systems; (2) the use of hard or soft structures for the purpose of avoiding, slowing, or remedying erosion on bay shorelines; (3) structural shoreline protection projects utilizing innovative technologies designed or engineered to minimize beach scour; and (4) one or more erosion response demonstration projects if the state's portion does not exceed one-tenth of the total appropriated to the Land Office for coastal erosion planning and response. Senate Bill 517 also amended §33.603, Texas Natural Resources Code, by adding subsection (h) to allow the Commissioner of the GLO to determine the percentage of the shared project cost a qualified project partner must pay for a project undertaken pursuant to subsection (b)(11) for removal of debris or structures, or relocation of structures from the public beach. The amendments to §15.41 and §15.42 are adopted to implement CEPRA as amended by Senate Bill 517.

The amendment to §15.41(1)(A)(xiii) concerning information required in the project goal summary submitted by a potential project partner adds to the list of the types of projects for which funding may be sought new subclause (VII) relating to a structural shoreline protection project on or landward of a public beach that utilizes innovative technologies, designed or engineered to minimize beach scour, in accordance with Texas Natural Resources Code, §33.603(b)(12), and new subclause (VIII) relating to a demonstration project in accordance with Texas Natural Resources Code, §33.603(g). Section 15.41(1)(A)(xv) is also adopted to require the project goal summary to include a description of how the proposed project is consistent with the policies of the Coastal Coordination Council for shore protection projects promulgated in 31 TAC §501.26(b) (relating to Policies for Construction in the Beach/Dune System) if the project involves structural shoreline protection on or landward of a public beach.

The amendments to §15.41(1)(C) concerning the criteria used by the Land Office to evaluate project goal summaries add new clause (x) to include consideration of whether proposed structures will be designed with a sediment bypass system, if the project involves the construction or retrofitting of dams, jetties, groins or other structural impoundments; and new clause (xi) to include consideration of whether the proposed project uses innovative technologies designed or engineered to minimize beach scour in accordance with Texas Natural Resources Code, §33.603(b)(12) and is consistent with the policies of the Coastal Coordination Council promulgated in 31 TAC §501.26(b) (relating to Policies for Construction in the Beach/Dune System), if the project involves structural shoreline protection on or landward of a public beach.

The amendments to §15.42(d) concerning the state's portion of the shared project costs adds a limitation of one-tenth of the total amount appropriated to the Land Office for coastal erosion planning and response during the current state fiscal biennium, if the project is a demonstration project undertaken or funded pursuant to Texas Natural Resources Code §33.603(g) as added by Senate Bill 517. The amendments to §15.42(d) concerning the qualified project partner's portion of the shared project costs for a project undertaken for the removal of debris or structures, or the relocation of structures from the public beach provides that the Land Commissioner may determine the percentage that the qualified project partner must pay in accordance with Texas Natural Resources Code §33.603(h) as added by Senate Bill 517.

The justification for the adopted rulemaking is that potential project partners and the Commissioner of the Land Office will have additional funding options available for projects that utilize hard structures in conjunction with beach nourishment to respond to coastal erosion. A November 2003 study by the University of Texas Bureau of Economic Geology reported that new technologies such as geotextile tubes, in conjunction with beach nourishment, provide an effective response to erosion on the Texas Gulf coast. Geotextile tubes, comprised of fabric tubes filled with sand, are placed parallel to the shoreline to protect property and public infrastructure from storm surge and erosion. Since parts of the Texas coast are undergoing long-term shoreline retreat, local government officials are using these types of projects in conjunction with beach nourishment to mitigate the effects of erosion. CEPRA funding participation in such projects on or landward of the public beach will insure that they will be consistent with the policies of the Coastal Coordination Council promulgated in 31 TAC §501.26(b) (relating to Policies for Construction in the Beach/Dune System).

The Land Office has evaluated the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to Chapter 15, Subchapter B are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the adopted rulemaking implements legislative requirements in CEPRA relating to coastal erosion studies or projects undertaken in cooperation with a qualified project partner under an agreement with the Commissioner of the Land Office.

The adopted rulemaking is not subject to the Texas Coastal Management Program (CMP), Texas Natural Resources Code §33.2053 and 31 TAC §505.11, relating to the Actions and Rules Subject to the Coastal Management Program. Individual erosion response projects undertaken in compliance with these rules may be subject to the CMP, and consistency with the CMP is determined at the appropriate stage of project planning.

The Land Office received no comments during the public comment period.

The amendments are adopted under the Texas Natural Resources Code, §33.602(c) that provides the Commissioner of

the General Land Office with the authority to adopt rules to implement Subchapter H, Chapter 33, Texas Natural Resources Code, concerning coastal erosion.

Texas Natural Resources Code, §§33.601 - 33.605 are affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2006.

TRD-200600782

Trace Finley

Policy Director

General Land Office

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For further information, please call: (512) 305-8598



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 18. TOBACCO SETTLEMENT PERMANENT TRUST ACCOUNT

34 TAC §§18.1 - 18.4

The Comptroller of Public Accounts adopts amendments to §§18.1 - 18.4, concerning the administration and management of the assets of the Tobacco Settlement Permanent Trust Account (trust account) and the distribution formula, without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 82).

The purposes of the amendments are as follows:

First, the amendment to the definitions in §18.1 is intended to simplify the calculation of the distributions made from the trust account; provide for predictable, stable, and sustainable distributions over time; and protect and maintain the inflation adjusted value of the corpus.

Second, the amendment to §18.2 will change the distribution formula to simplify the calculation of the distributions and provide for predictable, stable, and sustainable distributions over time while maintaining the inflation adjusted value of the corpus.

Third, the amendment to §18.3 references the required contribution to the distribution stabilization account consistent with the revised distribution formula.

Fourth, the amendment to §18.4 will allow the comptroller or a designee, in addition to the investment advisory committee chair, to call meetings.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Government Code, §403.1041(h), which authorizes the comptroller to adopt rules related to the management and implementation of the trust account.

The amendments implement Government Code, §403.1041(h).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2006.

TRD-200600757

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 97. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§97.1 - 97.3, 97.201, 97.213 - 97.220, 97.241, 97.242, 97.245 - 97.247, 97.249, 97.250, 97.252, 97.253, 97.257, 97.281 - 97.283, 97.285, 97.287, 97.288, 97.290, 97.291, 97.298 - 97.301, 97.321, 97.322, and 97.603; adopts new §§97.11, 97.13, 97.15, 97.17, 97.19, 97.21, 97.23, 97.25, 97.27, 97.29, 97.31, 97.210, 97.501, 97.503, 97.505, 97.507, 97.509, 97.521, 97.523, 97.525, 97.527, 97.601, 97.602, and 97.604; and adopts the repeal of §§97.11 - 97.16, 97.221, 97.501, 97.502, 97.601, 97.602, and 97.604 in Chapter 97, governing Licensing Standards for Home and Community Support Services Agencies. The amendments to §§97.2, 97.217, 97.220, 97.241, 97.250, 97.282, 97.285, 97.288, 97.291, 97.300, 97.321, and 97.322, and new §§97.11, 97.17, 97.23, 97.27, 97.29, 97.210, 97.501, 97.521, 97.523, 97.525, 97.601, and 97.602 are adopted with changes to the proposed text published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6609). The amendments to §§97.1, 97.3, 97.201, 97.213 - 97.216, 97.218, 97.219, 97.242, 97.245 - 97.247, 97.249, 97.252, 97.253, 97.257, 97.281, 97.283, 97.287, 97.290, 97.298, 97.299, 97.301, and 97.603; new §§97.13, 97.15, 97.19, 97.21, 97.25, 97.31, 97.503, 97.505, 97.507, 97.509, 97.527, and 97.604; and repeal of §§97.11 - 97.16, 97.221, 97.501, 97.502, 97.601, 97.602, and 97.604 are adopted without changes to the proposed text.

The amendments, new sections, and repeal are adopted so that the rules will be better organized and easier for the public and home and community support services agencies (HCSSAs) to locate and understand. The amendments correct references to other rules, update statutory citations, and update state agency names. References to the Texas Department of Human Services are amended to the Department of Aging and Disability Services to reflect the name of the state agency that has the authority to

adopt rules for licensing and regulation of HCSSAs. The repeal and new sections update provisions regarding criteria and eligibility for licensing, application, license issuance, surveys, and enforcement.

The amendment to §97.2 added, deleted, and amended definitions to clarify terminology used throughout the chapter.

New Subchapter B was reorganized to better explain criteria and eligibility for licensing, application procedures, and issuance of a license.

New §97.210 added the requirement for an agency to adopt and enforce a written policy identifying the HCSSA's operating hours and to post notice of contact information if the person in charge of the HCSSA is away during agency operating hours. The amendment to §97.217 requires a HCSSA to notify DADS of a voluntary suspension of operations and the resumption of operations. The repeal of §97.221 deletes duplicate information that is included in new §97.25 concerning application procedures and requirements for a change of ownership.

The amendment to §97.241 requires that the license holder maintain accurate documentation and comply with enforcement orders. The amendment to §97.246 requires a HCSSA to conduct a criminal history check, an employee misconduct registry check, and a nurse aide registry check on each unlicensed person having face-to-face contact with clients who is employed by or volunteers for the HCSSA. The amendment to §97.249 requires a HCSSA to notify DADS and appropriate enforcement agencies immediately if there is cause to believe that a client has been abused, neglected, or exploited by an individual directly employed by the HCSSA, a contractor, or a volunteer. The amendment to §97.250 defines the written policy a HCSSA must adopt and enforce for a complaint investigation, including an investigation for abuse, neglect, and exploitation and requires the HCSSA to submit a written report no later than 10 days after reporting the act. The amendment to §97.253 requires a HCSSA to state whether it conducts drug testing. If the HCSSA does conduct drug testing, the HCSSA must describe the method and provide a copy of the policy to anyone who applies for services or requests a copy from the HCSSA.

The amendment to §97.287 requires a HCSSA's Quality Assessment and Performance Improvement Program to include components that measure the effectiveness and safety of all services provided by the HCSSA. The amendment to §97.290 requires a HCSSA to obtain and keep in the client's file a written agreement for backup services if the backup service provider is an individual other than a HCSSA employee or contractor. The amendment to §97.300 clarifies the applicability of certain requirements relating to medication administration if the HCSSA staff administers medications. The amendment to §97.301 explains the requirements for a HCSSA if it is using a physician's stamped signature for a signed paper record.

New §97.505 states that DADS will not announce or give prior notice to a HCSSA when conducting a survey, including an initial survey. New §97.521 requires a HCSSA to admit at least one client, with that client having been provided services in either the licensed home health and licensed-only hospice category, and initiate services within six months of receiving an initial license. A HCSSA must also submit a written request for an initial survey at least six months before the expiration date of the initial license.

New §97.602 includes updated administrative penalty charts in subsection (e)(1) and (2) to allow DADS to add certain violations in areas that jeopardize the health and safety of clients.

DADS received 52 written comments from the Texas Association for Home Care and the Visiting Nurses Association. A summary of each comment and the responses follow.

Comment: Concerning §97.2(40)(A), a commenter asked why the definition for nursing as a subcategory of home health service specifies that it includes blood pressure monitoring and diabetes treatment. The commenter asked why are these specifically singled out and whether they need to be.

Response: The description of nursing as a type of home health service includes blood pressure monitoring and diabetes treatment because that is how "home health service" is defined in Health and Safety Code §142.001(13). The rule language was not changed in response to this comment.

Comment: Concerning §97.2(46), a commenter requested the definition for "inpatient unit" could be improved by stating "a facility that provides a continuum of hospice services including medical or nursing care to clients admitted into the unit and that is in compliance with:."

Concerning §97.2(46)(A), the commenter suggested that "hospice" be inserted before "inpatient."

Response: Inpatient unit is defined in Health and Safety Code, §142.001(16), and the rule language mirrors this definition. The rule language was not changed in response to this comment.

Comment: Concerning the definition of "manager" at §97.2(50), a commenter suggested that "independent" be inserted before "contractual relationship" because an employee can have a contractual relationship with a HCSSA.

Response: The agency disagrees with the comment because the suggested language would exclude a non-contracted employee from being a manager. However, the agency has changed the rule language to clarify that a manager for a HCSSA may be an employee or independent contractor.

Comment: Concerning §97.11(g), a commenter believed the language is beyond the scope of the statute, Health and Safety Code, §142.011, and does not allow for mitigating circumstances in the application review process. The commenter asks that "may" be used as the statute is intended to be permissive rather than mandatory. The commenter believes that mandatory language is beyond the statute.

Response: The agency does not agree that mandatory language is beyond its statutory authority. The statute gives the agency permission to deny a license application and this rule sets out the agency's policy decision on the denial of license applications. The agency will not, under any circumstances, grant a license to an applicant if the listed persons have a history of any of the circumstances described in §97.11(g). The rule language was not changed in response to this comment.

Comment: Concerning §97.11(g) and §97.601(c), a commenter expressed that the language as proposed that makes reference to a "controlling person" does not adequately provide guidance to the license holder as to the individuals or positions subject to a criminal background check. The commenter suggests that individuals who are subject to a criminal background check be specifically listed by position in the rule so that the applicability is clear.

Response: The agency does not agree with the comment. The term "controlling person" does not correspond directly to specific positions within the organization of a HCSSA; rather, it is defined as any person with the ability, acting alone or with others, to di-

rectly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of a HCSSA or other person. The agency does not wish to limit the range of persons who meet the definition of "controlling person" in §97.2(25) by adding a list of specific positions within a HCSSA. This requirement is consistent with the requirements for other provider types regulated by DADS. The rule language was not changed in response to this comment.

Comment: Concerning §97.11(g)(1)(A) and §97.601(c), a commenter felt that a list, as provided by the commenter, of convictions barring employment and that may result in denial, suspension, or revocation of the license should be expanded to include certain convictions not specifically referenced in Health and Safety Code, Chapter 250.

Response: The agency agrees with the comment and expanded the list in §97.11(g)(1)(A) to clarify the criminal acts and convictions that are bars to licensure at the time of application. The agency moved the provision regarding a criminal conviction from §97.601(c)(1)(D) to §97.241(b) to more accurately reflect that this is a standard that must be met by a HCSSA during the licensure period and expanded the list of convictions that are prohibited during the licensure period. The agency has not included the language prohibiting any conviction regarding moral turpitude provided in the commenter's list, as it has been difficult to define in practice. The agency has added a felony involving practicing any health-related profession without a required license.

Comment: Concerning §97.13(a)(1) and (2), a commenter expressed that the current availability of presurvey conference course times is limited and, therefore, the alternate administrator and alternate supervisor should not be required to attend the presurvey conference as it could significantly delay the license of a new HCSSA. It was also noted that currently seats are limited to two per HCSSA.

Response: The agency agrees that current availability of presurvey conference course times is limited and that seats are limited to two per HCSSA. However, the alternate administrator and alternate supervising nurse in a new HCSSA must meet the same criteria as the administrator and supervising nurse and this includes completing a presurvey conference. When this rule is adopted, DADS will expand presurvey conference availability to meet the needs of new HCSSAs, giving priority to a HCSSA pending initial licensure over those administrators and supervising nurses who may be attending presurvey conference as continuing education. The rule language was not changed in response to this comment.

Comment: Concerning §97.17(e)(2), a commenter suggested that the requirement remain that the application must be postmarked at least 30 days before the expiration date of the license and not received by DADS as a HCSSA cannot be responsible for the U.S. mail.

Response: The agency changed the rule as requested in response to this comment. The agency intends to continue further discussion with stakeholders to determine what should be considered a timely submission of a HCSSA's renewal application.

Comment: Concerning §97.17(e)(3), a commenter noted that originals are often printed from an electronic printer and asked if these documents need to be notarized. The commenter suggested that "original" be defined.

Response: The agency agrees that electronic reproduction of documents is more prevalent today. The agency requires no-

tarization of a copy to ensure that the applicant attests that the copy is true and correct. Any reproduction of the original source document is considered a copy. The agency does not agree that "original" needs to be defined. No change in the rule was made in response to this comment.

Comment: Concerning §97.17(g), a commenter stated that the provision does not appear to be workable. The commenter asked if a HCSSA would have to cease operations upon expiration of the license, with no grace period, if DADS did not receive the application at least 30 days before its expiration. The commenter suggested that there should be a provision for a grace period if a HCSSA has notified DADS that it wishes to diligently pursue renewal, even if untimely, and does so.

Response: The agency does not agree with the comment and the rule language was not changed in response to this comment. A HCSSA that does not file a timely application has a 90-day grace period, as provided in §97.17(g)(2), to pay a late renewal fee with a renewal application. However, the HCSSA must cease operation on the date the license expires.

Comment: Concerning §97.17(h)(4), a commenter asked if a license holder's spouse would need a power of attorney to file the renewal form since this is described in §97.17(h)(1).

Response: The agency agrees that spouses should not be treated differently and changed §97.17(h)(1) and (4) in response to this comment. The rule will state that an individual having power of attorney from the license holder or other authority to act on behalf of the license holder may request renewal of the license and a copy of the power of attorney or other authority must be filed with DADS.

Comment: Concerning §97.19(d), a commenter believed the language is beyond the scope of the statute, Health and Safety Code, §142.011, and does not allow for mitigating circumstances in the application review process. The commenter asks that "may" be used as the statute is intended to be permissive rather than mandatory. The commenter believes that mandatory language is beyond the statute.

Response: The agency does not agree that mandatory language is beyond its statutory authority. The statute gives the agency permission to deny an application to renew a license and this rule sets out the agency's policy decision on the denial of renewal applications. The agency will not approve an application to renew a license under the circumstances described in §97.19(d). The rule language was not changed in response to this comment.

Comment: Concerning §97.23(b)(1), a commenter suggested that the sentence could be amended to add "a change" before sole proprietorship.

Response: The agency does not agree with the comment because the suggested revision does not improve the readability of the rule. No change in the rule was made in response to this comment.

Comment: Concerning §97.23(b)(2), a commenter noted that "taxpayer" is one word.

Response: The agency agrees with the comment and has made the requested change to the rule.

Comment: Concerning §97.27(a), a commenter noted that the proposed language did not accurately identify the categories of licensure to which the section applies.

Response: The agency agrees with the comment and has specified the categories of licensure intended to be covered by the section.

Comment: Concerning §97.27(g), a commenter requested that rule language reflect the Centers for Medicare and Medicaid Services' (CMS's) process for notifications of approval and denial of a branch application to a HCSSA licensed to provide licensed and certified home health services. This rule language should be the same as listed in §97.29(g) for alternate delivery sites.

Response: The agency cannot include CMS procedures in this chapter, as the agency does not have the authority to bind CMS to state licensing rules. No change has been made to §97.27(g) in response to this comment; however, the agency has made a change to §97.29(g) to delete the CMS procedures in that section.

Comment: Concerning §97.29(a)(3), a commenter requested that the agency remove language requiring a HCSSA to demonstrate methods for adequate supervision of an alternate delivery site during the application process. The commenter noted that the agency has no written standards to gauge adequate supervision and oversight and that this may lead to subjective denials.

Response: The agency agrees to delete the proposed language as requested pending further development of standards for adequate supervision and oversight of an alternate delivery site.

Comment: Concerning §97.217(b)(1), a commenter asked if a HCSSA has voluntarily suspended its normal business operations, why a voluntary suspension would not begin when the HCSSA knowingly, which the word "voluntarily" suggests, suspends those operations.

Response: The agency chose the 10-day threshold to define a voluntary suspension of operations as a method to exclude those more frequent, temporary closures that sometimes occur with smaller HCSSAs. The agency did not wish to make a rule that would be particularly burdensome for small businesses that may close for brief amounts of time. The rule language was not changed in response to this comment.

Comment: Concerning §97.217(b)(2), a commenter expressed that this subsection is not worded correctly, as the words "at least" should be replaced by the words "no later than" or similar wording.

Response: The agency agrees with the comment and has changed the rule to state that a HCSSA must notify the Home and Community Support Services Agencies Licensing Unit in writing no later than seven days after resuming operations.

Comment: Concerning §97.218(a), a commenter expressed that "immediately" does not provide a measurable time frame. Perhaps, instead of immediately, a 10-day time frame could be substituted to give a definitive deadline.

Response: The agency disagrees with this comment and the rule language was not changed in response to this comment. The intent is for a HCSSA to notify DADS in a more timely manner than within 10 days. Also, this is not new language; it exists in the current rule.

Comment: Concerning §97.218(b), a commenter requested that, prior to enforcement of this rule, DADS make its Criminal History Check Consent form accessible online.

Response: The HCSSA application packet including this form is not currently online because existing rules require that the appli-

cation be requested in writing. DADS will consider making this form available online. No change in the rule was made in response to this comment.

Comment: Concerning §97.220(a)(2), a commenter noted there may be, as there currently is, an emergency when a HCSSA might provide services outside of its service area. Language should be added for exceptions such as "unless otherwise permitted by these regulations in the event of an emergency."

Response: The agency does not agree with the comment. Section 97.220(c)(2) allows for an extension of a HCSSA's service area without 30 days notice in the event of an emergency. The rule language was not changed in response to this comment.

Comment: Concerning §§97.220(c)(1) and (2), 97.321(c)(3)(A), and 97.322(c)(3)(A), a commenter believed that a requirement for a HCSSA to request expansion of a service area may lead to arbitrary denials of the expansion and wants the language to require only a notice. The commenter cited Senate Bill 983 of the 76th Texas Legislature as saying that it specifically stated that the agency was not to limit service area based on time or distance.

Response: The agency does not agree that a requirement for a HCSSA to request expansion of a service area may lead to arbitrary denials of the expansion. The proposed rule language was intended to prohibit expansion when certain enforcement actions were pending against the HCSSA. Also, Senate Bill 983 of the 76th legislative session asked HHSC to contact the Centers for Medicare and Medicaid Services (CMS), formerly the Health Care Financing Administration, to request that CMS adopt certain rules concerning HCSSAs. It did not cover state licensing rules. However, the rule language was changed in response to this request to require only a notice. The agency intends to continue further discussion with external stakeholders on this issue.

Comment: Concerning §97.245(b)(5), a commenter asked whether criminal history checks and searches of the nurse aide registry and the employee misconduct registry include independent contractor personnel. Section 97.245 seems to include training requirements for all personnel, including independent contractors, so for safety purposes should these checks not also be conducted.

Response: The agency does not require a HCSSA to perform a criminal history check on employees, volunteers, or contractors of an independent contractor. No change in the rule was made in response to this comment.

Comment: Concerning §97.249(c), a commenter asked in addition to the word "immediately" perhaps a "no later than" time frame should be added to ensure timely communication.

Response: The agency's intent is that a report of abuse, neglect, and exploitation be made as soon as the reporter has "cause to believe" an act of abuse, neglect, or exploitation has occurred as defined in §97.249(a)(2). This is consistent with current rules for other long-term care programs. Using a time frame other than "immediately" could cause reporters to wait to report the act, directly and negatively affecting client health and safety. The rule was not changed in response to this comment.

Comment: Concerning §97.250(a), a commenter noted that a HCSSA's policies must address how it handles both complaints and reports of abuse, neglect, and exploitation. This is not an "either/or" requirement. If "and" is used, it makes it very clear that HCSSA's policy must address both investigation requirements as outlined in the rule under subsections (b) and (c).

Response: The agency agrees with the comment and made a change as suggested to §97.250(a).

Comment: Concerning §97.250(b), a commenter suggested adding the words "For reports of" to subsection (b) to further clarify that the process outlined in paragraphs (1) - (3) is exclusive to the investigation of reports of abuse, neglect, and exploitation and is not applicable to investigations of complaints.

Response: The agency agrees with the comment and made a change to §97.250(b) to reflect that paragraphs (1) - (3) apply only to reports of abuse, neglect, and exploitation.

Comment: Concerning §97.253(d), a commenter asked whether a HCSSA's actual drug testing policy, which might be hard for non-HCSSA personnel to read, or an explanation of that policy must be provided. The commenter favored an explanation of the policy.

Response: The agency disagrees with the comment and the rule language was not changed in response to this comment. The rule was rewritten to require disclosure by the HCSSA of the HCSSA's policies. While there is no requirement in the chapter regarding the quality of HCSSA policies, the policies should be clearly written, in a manner that clients and employees can understand. This rule is based on Health and Safety Code, §142.007, which requires a HCSSA to provide to the following persons a written statement describing the HCSSA's policy for the drug testing of employees who have direct contact with clients: (1) each person applying for services from the HCSSA; and (2) any person requesting the information. The agency's interpretation of §142.007 requires the HCSSA to provide the actual policy rather than an explanation of the policy because the agency thinks it is more useful to persons receiving the information.

Comment: Concerning §97.282(d), a commenter noted that this requirement applies to every category of licensure and suggested that adding the categories would make this clear.

Response: The agency agrees with the comment and added the categories of licensure to §97.282(d).

Comment: Concerning §97.285(2)(A) and (B), a commenter recommended the addition of "as disclosed by the client" to make it clear that personal assistance services agencies are only required to document what was disclosed to them by the client.

Response: The agency added the suggested language to §97.285(2)(B) in response to this comment. Subparagraphs (A) and (B) were reordered to clarify and improve the section.

Comment: Concerning §97.288(a), a commenter believed the rule as proposed implies that the HCSSA should control the coordination of care efforts of other entities involved in the client's care. The rule should be rewritten to state that HCSSA staff must coordinate care with all other service providers, including the physicians, contractors and other agencies.

Response: The agency does not agree with the comment that the rule as proposed implies that the HCSSA must control the coordination of care efforts of other entities. The intent, as in the existing rule and in the proposed language, is that the HCSSA must ensure coordination among all service providers. This concept is not new. However, the agency has made the suggested change to §97.288(a) to clarify the intent of the rule.

Comment: Concerning §97.300, a commenter believed the intent of the rule section has been changed. This rule has always applied to medication administration only. The original language

that initiated the subsection formerly stated, "If an agency administers medication to its clients, the agency must adopt and enforce a written policy for maintaining a current medication list and medication administration record." Everything that follows is based on the premise that it is required because medications are being administered. The proposed language takes the medication list out of its original context making this a requirement regardless of whether the HCSSA administers medication. The commenter requests that the agency reorder the language as suggested.

Response: The agency agrees with the comments and has added language to the section so that it applies only to clients to whom agency staff administer medications.

Comment: Concerning §97.301(a)(6)(A)(iii), a commenter expressed that the requirement that a HCSSA obtain a new authorization letter from the physician annually and that a physician's authorization letter is void one year from the date of the letter is overly burdensome with no benefit to equal that burden. The commenter suggested that the rule put the burden on the HCSSA to ensure that doctor's orders are valid and that the fax signature remains valid.

Response: The agency disagrees with the comment. The intent of the rule is that a HCSSA ensure at least annually that the physician is aware of the use of the stamped signature and continues to authorize its use. The rule language was not changed in response to this comment.

Comment: Concerning §97.501(a)(2), a commenter asked if the subsection applies to home health surveys only or to hospice and personal assistance services surveys as well.

Response: The subsection refers to all categories of licensure and no change in the rule was made in response to this comment.

Comment: Concerning §97.501(a)(3) and (4), a commenter requested that the licensure categories be added to the rule for clarity.

Response: The agency agrees with the comment and added the categories of licensure to §97.501(3) and (4) as requested.

Comment: Concerning §97.521(b), a commenter suggested that a HCSSA be required to have admitted a client for the higher-skilled licensure category, even if it is not required to admit a client under every authorized license category.

Response: The agency agrees with the commenter and the rule language was changed in response to this comment to include the requirement that a HCSSA admit a client in the appropriate category. The agency did not use "higher-skilled" because licensure categories are not ranked as higher- or lower-skilled.

Comment: Concerning §97.523(c), a commenter believed that the proposed rule is confusing and unclear. The commenter stated that personal assistance services (PAS) supervisors are not administrative level personnel and should not be required to be available to provide information during the survey.

Response: The agency changed §97.523(c) to delete the requirement that a PAS supervisor must be available to provide information if needed during the survey. The agency intends to continue further discussion with stakeholders on the issue of PAS supervision.

Comment: Concerning §97.525(a)(1)(B), a commenter asked if the rule allows a surveyor to pull records beyond the current sur-

vey period. The commenter suggested clarifying language such as "reviews any agency records relevant to the current survey period that the surveyor believes."

Response: The agency's intent is that the surveyor has the ability to fully investigate any and all allegations relevant to the survey or investigation of allegations regardless of the date of the most recent survey. This may include records that were or were not reviewed in a recent survey, but that are relevant to the current survey. The agency does not intend to re-cite deficient practices previously noted in other surveys. The rule language was not changed in response to this comment.

Comment: Concerning §97.527(g)(2)(A), a commenter asked who determines serious harm to a client or a serious threat to the health or safety of a client, and whether there are guidelines to make this determination.

Response: The surveyor, in cooperation with the program manager and other DADS staff, makes the initial determination as to what is a serious threat or actual serious harm to a client. DADS staff use the state licensing rules, the State Operations Manual (for licensed and certified agencies), and survey protocols to make this determination. No change to the rule was made in response to this comment.

Comment: Concerning §97.527(k)(2)(A), a commenter noted that the time frame for compliance is based on a postmark date. Regardless, the HCSSA cannot guarantee receipt at the DADS address.

Response: The agency disagrees with the comment and the rule language was not changed in response to this comment. This requirement is consistent with other long-term care programs. The HCSSA may call DADS to confirm DADS' receipt of the application before the deadline.

Comment: Concerning §97.601(e), a commenter believes the proposed rule goes beyond the intent of the statute, Health and Safety Code, §142.011. The statute clearly states "The department may immediately suspend or revoke a license when the health and safety of persons are threatened." The intent was to give DADS the ability to issue immediate suspensions or revocations based upon a pervasive practice that severely impacted the HCSSA's ability to care for their clients rather than an incident isolated to one client.

Response: The agency does not agree with commenter's interpretation of the intent of Health and Safety Code, §142.011. However, the agency changed the language as requested by the commenter in §97.601(e) to make the rule once again match the statutory language.

Comment: Concerning §97.601(f)(1)(A), a commenter noted that registered or certified mail is used as evidence of DADS notice. Registered or certified mail should be used as the standard as proof for all notices, whether for DADS or the HCSSA.

Response: The agency disagrees with the comment. Section 97.601(f)(1)(A) mirrors Government Code, §2001.054(c)(1), which states the agency gives notice by personal service or by registered or certified mail to the license holder of facts or conduct alleged to warrant the intended action. In other words, this type of notice is required by law in this situation. Historically, the agency has not required license holders to use registered or certified mail when they submit items to the agency, although they are free to do so. Sending notice by registered or certified mail is an added expense that the agency is unwilling to require. The HCSSA may call DADS to confirm DADS' receipt of the

material before the deadline. No change to the rule was made in response to this comment.

Comment: Concerning §97.601(g), a commenter believed the proposed language is inconsistent with §97.601(e)(1), which states notice of immediate suspension or revocation will be delivered via certified mail with return receipt requested or by hand-delivery. If the agency is going to group notifications for different types of enforcement action together, then the agency should keep the method of delivery consistent.

Response: The agency agrees with the comment and has made the two provisions for §97.601(e)(1) and §97.601(g) consistent. Under both provisions, notification must be made both by fax and either by certified mail with return receipt requested or hand-delivery.

Comment: Concerning §97.601(h)(4), a commenter believed as a matter of procedure, due process allows a party to request a default judgment from the judge if the party is unable to make it to the hearing. The rule as proposed implies that if a person is unable to make it to the hearing (even if for good cause) the agency will take action as a matter of law. Since this is a matter of procedure, the commenter suggested this would be more appropriately addressed by the HHSC Appeals Division rules or by the State Office of Administrative Hearings rules. If the agency is attempting to let HCSSAs know of potential consequences, the language should be permissive rather than mandatory.

Response: The agency agrees that this language is not appropriately included in these rules and has removed the proposed language from §97.601(h)(4) and renumbered the remaining paragraphs under subsection (h).

Comment: Concerning §97.601(h)(5) and (6), a commenter believed the proposed language in this section is quite different from the present rule. The present language follows Government Code, §2001.054, which speaks to when an adverse action is final. The commenter recommends the agency use the current language located at §97.601(e)(5).

Response: The agency does not agree with the comment. Section 97.601(h)(5) and (6) comply with Government Code, §2001.054, and do not represent a substantive change from the agency's current rule. A HCSSA must continue to make timely renewal applications during the appeal because the license that would be upheld in the appeal is only a one-year license, and a HCSSA must not operate without a valid license. The rule language was not changed in response to this comment.

Comment: Concerning §97.602(b)(2)(A) and (B), a commenter expressed that the degrees of violation are interesting in that they go from minor for a Level A violation to serious harm or death or serious threat to the health or safety of a client with no intermediate level. Perhaps §97.602(b)(2)(B)(iii) "substantially limits the agency's capacity to provide care" could become an intermediate level of violation between levels A and B.

Response: The agency does not agree that the proposed language should be amended based on this comment. Adding an intermediate level of violation would need time for serious study and input from all interested stakeholders. However, an amendment to the rule concerning the possibility for intermediate penalties will be considered at a later date. The rule language was not changed in response to this comment.

Comment: Concerning §97.602(d)(1) and (2), a commenter suggested that the proposed rule goes beyond the statute, Health and Safety Code, §142.017(b), which specifically states the as-

sessments occur after receipt of written notice. Nothing in the statute allows DADS to assess penalties before the written statement of violations is received by the HCSSA. The commenter suggested that DADS utilize the language provided by the commenter, which directly tracks the licensure statute.

Response: The agency agrees with the comment and has amended the language in §97.602(d)(1) and (2) as requested.

Comment: Concerning §97.604(a), a commenter asked if DADS can still take action against the owners of a HCSSA that has a surrendered or expired license and, if so, whether this should be spelled out in the rule.

Response: The rule allows a HCSSA to surrender its license or allow its license to expire to avoid enforcement action by DADS. If a HCSSA surrenders its license in lieu of enforcement action, DADS will not continue to take enforcement action against the owners of a formerly licensed HCSSA. However, in accordance with §97.11(g)(3)(B) and §97.604(c), surrendering or allowing a HCSSA license to expire in lieu of enforcement action is a bar to licensure for 12 months. No change to the rule was made in response to this comment.

Comment: Concerning §97.604(c), a commenter asked if the one-year denial of a licensure application applies if a branch license only is surrendered and a HCSSA wishes to reopen that branch.

Response: The question, as written, appears to assume that enforcement action is taken against the branch license. This assumption is not correct. Enforcement action is taken against the parent license and would continue regardless of branch office closure. The branch office is merely an extension of the parent and should not be considered a separate entity. No change to the rule was made in response to this comment.

In addition, changes were made to clarify §§97.210, 97.291, 97.525, and 97.602.

The change to §97.210(c) added language to clarify that a HCSSA must provide notice of how to contact the person in charge during the HCSSA's operating hours or between 8:00 a.m. to 5:00 p.m., Monday through Friday, if the HCSSA is closed.

The change to §97.291 corrected a cross-reference and the change to §97.525 corrected punctuation to improve the accuracy of the sections.

The change to §97.602(g)(2)(B) corrected the rule language to state that a HCSSA must submit the request for a formal administrative hearing to the Health and Human Services Commission (HHSC), because management of hearings now resides with HHSC.

Because the rule language in §§97.220, 97.321, and 97.322 concerning service areas, §97.300 concerning medication administration, and §97.241 concerning management criteria has been changed, the administrative penalties charts in §97.602(e)(1) and (2) have been updated to reflect those changes.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§97.1 - 97.3

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall

study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides DADS with the authority to adopt rules for licensing and regulation of home and community support services agencies.

§97.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Accessible and flexible services--Services which are delivered in the least intrusive manner possible and are provided in all settings where individuals live, work, and recreate.

(2) Administration of medication--The direct application of any medication by injection, inhalation, ingestion, or any other means to the body of a client. The preparation of medication is part of the administration of medication and is the act or process of making ready a medication for administration, including the calculation of a client's medication dosage; altering the form of the medication by crushing, dissolving, or any other method; reconstitution of an injectable medication; drawing an injectable medication into a syringe; preparing an intravenous admixture; or any other act required to render the medication ready for administration.

(3) Administrative support site--A facility or site where an agency performs administrative and other support functions but does not provide direct home health, hospice, or personal assistance services. This site does not require an agency license.

(4) Administrator--The person who is responsible for the day-to-day operations of an agency.

(5) Advanced practice nurse--A registered nurse who is approved by the Board of Nurse Examiners (BNE) to practice as an advanced practice nurse and who maintains compliance with the applicable rules of the BNE. See BNE's definition of advanced practice nurse in 22 TAC §221.1 (concerning definitions).

(6) Affiliate--With respect to an applicant or license holder, which is:

(A) a corporation--means each officer, director, and stockholder with direct ownership of at least 5.0%, subsidiary, and parent company;

(B) a limited liability company--means each officer, member, and parent company;

(C) an individual--means:

(i) the individual's spouse;

(ii) each partnership and each partner thereof of which the individual or any affiliate of the individual is a partner; and

(iii) each corporation in which the individual is an officer, director, or stockholder with a direct ownership or disclosable interest of at least 5.0%.

(D) a partnership--means each partner and any parent company; and

(E) a group of co-owners under any other business arrangement--means each officer, director, or the equivalent under the specific business arrangement and each parent company.

(7) Agency--A home and community support services agency.

(8) Alternate delivery site--A facility or site, including a residential unit or an inpatient unit:

(A) that is owned or operated by an agency providing hospice services;

(B) that is not the hospice's principal place of business. For the purposes of this definition, the hospice's principal place of business is the parent office for the hospice;

(C) that is located in the geographical area served by the hospice; and

(D) from which the hospice provides hospice services.

(9) Applicant--The owner of an agency that is applying for a license under the statute. This is the person in whose name the license will be issued.

(10) Assistance with self-administration of medication--Any needed ancillary aid provided to a client in the client's self-administered medication or treatment regimen, such as reminding a client to take a medication at the prescribed time, opening and closing a medication container, pouring a predetermined quantity of liquid to be ingested, returning a medication to the proper storage area, and assisting in reordering medications from a pharmacy. Such ancillary aid includes administration of any medication when the client has the cognitive ability to direct the administration of their medication and would self-administer if not for a functional limitation.

(11) Association--A partnership, limited liability company, or other business entity that is not a corporation.

(12) Audiologist--A person who is currently licensed under the Occupations Code, Chapter 401, as an audiologist.

(13) Bereavement--The process by which a survivor of a deceased person mourns and experiences grief.

(14) Bereavement services--Support services offered to a family during bereavement. Family includes a significant other(s).

(15) Branch office--A facility or site in the service area of a parent agency from which home health or personal assistance services are delivered or where active client records are maintained. This does not include inactive records that are stored at an unlicensed site.

(16) Care plan--

(A) a written plan prepared by the appropriate health care professional for a client of the home and community support services agency; or

(B) for home dialysis designation, a written plan developed by the physician, registered nurse, dietitian, and qualified social worker to personalize the care for the client and enable long- and short-term goals to be met.

(17) Case conference--A conference among personnel furnishing services to the client to ensure that their efforts are coordinated effectively and support the objectives outlined in the plan of care or care plan.

(18) Certified agency--A home and community support services agency, or portion of the agency, that:

(A) provides a home health service; and

(B) is certified by an official of the Department of Health and Human Services as in compliance with conditions of participation in Social Security Act, Title XVIII (42 United States Code (USC) §1395 et seq.).

(19) Certified home health services--Home health services that are provided by a certified agency.

(20) CHAP--Community Health Accreditation Program, Inc. An independent, nonprofit accrediting body that publicly certifies that an organization has voluntarily met certain standards for home and community-based health care.

(21) Client--An individual receiving home health, hospice, or personal assistance services from a licensed home and community support services agency. This term includes each member of the primary client's family if the member is receiving ongoing services. This term does not include the spouse, significant other, or other family member living with the client who receives a one-time service (e.g., vaccine) if the spouse, significant other, or other family member receives the service in connection with the care of a client.

(22) Clinical note--A dated and signed written notation by agency personnel of a contact with a client containing a description of signs and symptoms; treatment and medication given; the client's reaction; other health services provided; and any changes in physical and emotional condition.

(23) CMS--Centers for Medicare and Medicaid Services. The federal agency that administers the Medicare program and works in partnership with the states to administer Medicaid.

(24) Complaint--An allegation against an agency regulated by DADS or against an employee of an agency regulated by DADS that involves a violation of this chapter or the statute.

(25) Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an agency or other person.

(A) A controlling person includes:

(i) a management company or other business entity that operates or contracts with others for the operation of an agency;

(ii) a person who is a controlling person of a management company or other business entity that operates an agency or that contracts with another person for the operation of an agency; and

(iii) any other individual who, because of a personal, familial, or other relationship with the owner, manager, or provider of an agency, is in a position of actual control or authority with respect to the agency, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the agency.

(B) A controlling person, as described by subparagraph (A)(iii) of this paragraph, does not include an employee, lender, secured creditor, or other person who does not exercise formal or actual influence or control over the operation of an agency.

(26) Counselor--An individual qualified under Medicare standards to provide counseling services, including bereavement, dietary, spiritual, and other counseling services to both the client and the family.

(27) DADS--Department of Aging and Disability Services.

(28) Day--Any reference to a day means a calendar day, unless otherwise specified in the text. A calendar day includes weekends and holidays.

(29) Deficiency--A finding of noncompliance with federal requirements resulting from a survey.

(30) Designated survey office--A DADS Home and Community Support Services Agencies Program office located in an agency's geographic region.

(31) Dialysis treatment record--For home dialysis designation, a dated and signed written notation by the person providing dialysis treatment which contains a description of signs and symptoms, machine parameters and pressure settings, type of dialyzer and dialysate, actual pre- and post- treatment weight, medications administered as part of the treatment, and the client's response to treatment.

(32) Dietitian--A person who is currently licensed under the laws of the State of Texas to use the title of licensed dietitian or provisional licensed dietitian, or who is a registered dietitian.

(33) End stage renal disease (ESRD)--For home dialysis designation, the stage of renal impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplantation to maintain life.

(34) Freestanding hospice--An agency that provides hospice services to clients of the agency who are residing at the agency's physical location including inpatient and respite care.

(35) Functional need--Needs of the individual that require services without regard to diagnosis or label.

(36) Health assessment--A determination of a client's physical and mental status through inventory of systems.

(37) Home and community support services agency--A person who provides home health, hospice, or personal assistance services for pay or other consideration in a client's residence, an independent living environment, or another appropriate location.

(38) Home health aide--An individual working for an agency who meets at least one of the requirements for home health aides as defined in §97.701 of this chapter (relating to Home Health Aides).

(39) Home health medication aide--A person permitted under the Health and Safety Code, Chapter 142, Subchapter B.

(40) Home health service--The provision of one or more of the following health services required by an individual in a residence or independent living environment:

(A) nursing, including blood pressure monitoring and diabetes treatment;

(B) physical, occupational, speech, or respiratory therapy;

(C) medical social service;

(D) intravenous therapy;

(E) dialysis;

(F) service provided by unlicensed personnel under the delegation or supervision of a licensed health professional;

(G) the furnishing of medical equipment and supplies, excluding drugs and medicines; or

(H) nutritional counseling.

(41) Hospice--A person licensed under this chapter to provide hospice services, including a person who owns or operates a residential unit or an inpatient unit.

(42) Hospice services--Services, including services provided by unlicensed personnel under the delegation of a registered nurse or physical therapist, provided to a client or a client's family as

part of a coordinated program consistent with the standards and rules adopted under this chapter. These services include palliative care for terminally ill clients and support services for clients and their families that:

(A) are available 24 hours a day, seven days a week, during the last stages of illness, during death, and during bereavement;

(B) are provided by a medically directed interdisciplinary team; and

(C) may be provided in a home, nursing facility, residential unit, or inpatient unit according to need. These services do not include inpatient care normally provided in a licensed hospital to a terminally ill person who has not elected to be a hospice client. For the purposes of this definition, the word "home" includes a person's "residence" as defined in this section.

(43) Independent living environment--A client's residence, which may include a group home or foster home, or other settings where a client participates in activities, including school, work, or church.

(44) Individual/family choice and control--Individuals and families who express preferences and make choices about how their support service needs are met.

(45) Individualized service plan--A written plan prepared by the appropriate health care personnel for a client of a home and community support services agency licensed to provide personal assistance services.

(46) Inpatient unit--A facility that provides a continuum medical or nursing care and other hospice services to clients admitted into the unit and that is in compliance with:

(A) the conditions of participation for inpatient units adopted under Social Security Act, Title XVIII (42 United States Code §1395 et seq.); and

(B) standards adopted under this chapter.

(47) IRoD--Informal review of deficiencies. An informal process that allows an agency to refute a deficiency or violation cited during a survey.

(48) JCAHO--Joint Commission on Accreditation of Healthcare Organizations. An independent, nonprofit organization for standard-setting and accrediting in-home care and other areas of health care.

(49) Licensed vocational nurse--A person who is currently licensed under Occupations Code, Chapter 301, as a licensed vocational nurse.

(50) Manager--An employee or independent contractor responsible for providing management services to a home and community support services agency for the overall operation of a home and community support services agency including administration, staffing, or delivery of services. Examples of contracts for services that will not be considered contracts for management services include contracts solely for maintenance, laundry, or food services.

(51) Medication administration record--A record used to document the administration of a client's medications.

(52) Medication list--A list that includes all prescription and over-the-counter medication that a client is currently taking, including the dosage, the frequency, and the method of administration.

(53) Notarized copy--A sworn affidavit stating that attached copies are true and correct copies of the original documents.

(54) Nursing facility--An institution licensed as a nursing home under the Health and Safety Code, Chapter 242.

(55) Nutritional counseling--Advising and assisting individuals or families on appropriate nutritional intake by integrating information from the nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status, with the goal being health promotion, disease prevention, and nutrition education. Nutritional counseling may include the following:

(A) dialogue with the client to discuss current eating habits, exercise habits, food budget, and problems with food preparation;

(B) discussion of dietary needs to help the client understand why certain foods should be included or excluded from the client's diet and to help with adjustment to the new or revised or existing diet plan;

(C) a personalized written diet plan as ordered by the client's physician or practitioner, to include instructions for implementation;

(D) providing the client with motivation to help the client understand and appreciate the importance of the diet plan in getting and staying healthy; or

(E) working with the client or the client's family members by recommending ideas for meal planning, food budget planning, and appropriate food gifts.

(56) Occupational therapist--A person who is currently licensed under the Occupational Therapy Practice Act, Occupations Code, Chapter 454, as an occupational therapist.

(57) Original active client record--A record composed first-hand for a client currently receiving services.

(58) Palliative care--Intervention services that focus primarily on the reduction or abatement of physical, psychosocial, and spiritual symptoms of a terminal illness.

(59) Parent agency--An agency that develops and maintains administrative controls and provides supervision of branch offices and alternate delivery sites.

(60) Parent company--A person, other than an individual, who has a direct 100% ownership interest in the owner of an agency.

(61) Person--An individual, corporation, or association.

(62) Personal assistance services--Routine ongoing care or services required by an individual in a residence or independent living environment that enable the individual to engage in the activities of daily living or to perform the physical functions required for independent living, including respite services. The term includes:

(A) personal care;

(B) health-related services performed under circumstances that are defined as not constituting the practice of professional nursing by the Board of Nurse Examiners through a memorandum of understanding with DADS in accordance with Health and Safety Code, §142.016; and

(C) health-related tasks provided by unlicensed personnel under the delegation of a registered nurse or that a registered nurse determines do not require delegation.

(63) Personal care--The provision of one or more of the following services required by an individual in a residence or independent living environment:

- (A) bathing;
- (B) dressing;
- (C) grooming;
- (D) feeding;
- (E) exercising;
- (F) toileting;
- (G) positioning;
- (H) assisting with self-administered medications;
- (I) routine hair and skin care; and
- (J) transfer or ambulation.

(64) Physical therapist--A person who is currently licensed under Occupations Code, Chapter 453, as a physical therapist.

(65) Physician--A person who holds a doctor of medicine or doctor of osteopathy degree and is currently licensed and practicing medicine under the laws of the state of Texas, Oklahoma, New Mexico, Arkansas, or Louisiana.

(66) Physician assistant--A person who is licensed under the Physician Assistant Licensing Act, Occupations Code, Chapter 204, as a physician assistant.

(67) Physician-delegated task--A task performed in accordance with the Occupations Code, Chapter 157, including orders signed by a physician that specify the delegated task, the individual to whom the task is delegated, and the client's name.

(68) Place of business--An office of a home and community support services agency that maintains client records or directs home health, hospice, or personal assistance services. This term includes a parent agency, a branch office, and an alternate delivery site. The term does not include an administrative support site.

(69) Plan of care--The written orders of a practitioner for a client who requires skilled services.

(70) Practitioner--A person who is currently licensed in a state in which the person practices as a physician, dentist, podiatrist, or a physician assistant, or a person who is a registered nurse registered with the Board of Nurse Examiners for the State of Texas as an advanced practice nurse.

(71) Presurvey conference--A conference held with DADS staff and the applicant or the applicant's representatives to review licensure standards and survey documents, and to provide consultation before the survey.

(72) Progress note--A dated and signed written notation by agency personnel summarizing facts about care and the client's response during a given period of time.

(73) Psychoactive treatment--The provision of a skilled nursing visit to a client with a psychiatric diagnosis under the direction of a physician that includes one or more of the following:

- (A) assessment of alterations in mental status or evidence of suicide ideation or tendencies;
- (B) teaching coping mechanisms or skills;
- (C) counseling activities; or
- (D) evaluation of the plan of care.

(74) Registered nurse (RN)--A person who is currently licensed under the Nursing Practice Act, Occupations Code, Chapter 301, as a registered nurse.

(75) Registered nurse delegation--Delegation by a registered nurse in accordance with:

(A) 22 TAC, Chapter 224 (concerning Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); and

(B) 22 TAC, Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

(76) Residence--A place where a person resides, including a home, a nursing facility, a convalescent home, or a residential unit.

(77) Residential unit--A facility that provides living quarters and hospice services to clients admitted into the unit and that is in compliance with standards adopted under the Health and Safety Code, Chapter 142.

(78) Respiratory therapist--A person who is currently licensed under Occupations Code, Chapter 604, as a respiratory care practitioner.

(79) Respite services--Support options that are provided temporarily for the purpose of relief for a primary caregiver in providing care to individuals of all ages with disabilities or at risk of abuse or neglect.

(80) Section--A reference to a specific rule in this chapter.

(81) Service area--A geographic area established by an agency in which all or some of the agency's services are available.

(82) Skilled services--Services in accordance with a plan of care that require the skills of:

- (A) a registered nurse;
- (B) a licensed vocational nurse;
- (C) a physical therapist;
- (D) an occupational therapist;
- (E) a respiratory therapist;
- (F) a speech-language pathologist;
- (G) an audiologist;
- (H) a social worker; or
- (I) a dietitian.

(83) Social worker--A person who is currently licensed as a social worker under Occupations Code, Chapter 505.

(84) Speech-language pathologist--A person who is currently licensed as a speech-language pathologist under Occupations Code, Chapter 401.

(85) Statute--The Health and Safety Code, Chapter 142.

(86) Substantial compliance--A finding in which an agency receives no recommendation for enforcement action after a survey.

(87) Supervising nurse--The person responsible for supervising skilled services provided by an agency and who has the qualifications described in §97.244(b) of this chapter (relating to Staffing

Qualifications and Conditions). This person may also be known as the director of nursing or similar title.

(88) Supervision--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(89) Support services--Social, spiritual, and emotional care provided to a client and a client's family by a hospice.

(90) Survey--An on-site inspection or complaint investigation conducted by a DADS representative to determine if an agency is in compliance with the statute and this chapter or in compliance with applicable federal requirements or both.

(91) Terminal illness--An illness for which there is a limited prognosis if the illness runs its usual course.

(92) Unlicensed person--An individual who is not licensed as a health care professional. The term includes home health aides, medication aides permitted by DADS, and other individuals providing personal care or assistance in health services.

(93) Unsatisfied judgments--A failure to fully carry out the terms or meet the obligation of a court's final disposition on the matters before it in a suit regarding the operation of an agency.

(94) Violation--A finding of noncompliance with this chapter or the statute resulting from a survey.

(95) Volunteer--An individual who provides assistance to a home and community support services agency without compensation other than reimbursement for actual expenses.

(96) Working day--Any day except Saturday, Sunday, a state holiday, or a federal holiday.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. APPLICATION AND ISSUANCE OF A LICENSE

40 TAC §§97.11 - 97.16

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chap-

ter 142, which provides DADS with the authority to adopt rules for licensing and regulation of home and community support services agencies.

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SUBCHAPTER B. CRITERIA AND ELIGIBILITY, APPLICATION PROCEDURES, AND ISSUANCE OF A LICENSE

40 TAC §§97.11, 97.13, 97.15, 97.17, 97.19, 97.21, 97.23, 97.25, 97.27, 97.29, 97.31

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides DADS with the authority to adopt rules for licensing and regulation of home and community support services agencies.

§97.11. *Criteria and Eligibility for Licensing.*

(a) An applicant for a license must not admit a client or initiate services until the applicant has completed the application process and has received an initial license.

(b) A first-time application for a license is an application for an initial license.

(c) An application for a license when there is a change of ownership is an application for an initial license.

(d) A separate license is required for each place of business as defined in §97.2 of this chapter (relating to Definitions).

(e) An agency's place of business must be located in and have an address in Texas. An agency located in another state must receive a license as a parent agency in Texas to operate as an agency in Texas.

(f) An applicant must be at least 18 years of age.

(g) DADS does not issue a license to an applicant if the applicant, a controlling person of the applicant, a person with a disclosable interest, an affiliate of the applicant, an administrator, or an alternate administrator:

(1) at the time of application:

(A) has a criminal history of:

(i) a crime listed in Health and Safety Code, §250.006 (relating to Convictions Barring Employment);

(ii) a conviction relating to deceptive business practices;

(iii) a misdemeanor or felony of practicing any health-related profession without a required license;

(iv) a conviction under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(v) an offense under the Penal Code involving a client or client of a health care facility or agency; or

(vi) a misdemeanor or felony offense under the Penal Code, as follows:

(I) Title 5, concerning offenses against the person;

(II) Title 7, concerning offenses against the property;

(III) Title 9, concerning offenses against public order and decency;

(IV) Title 10, concerning offenses against public health, safety, and morals; or

(V) Title 4, concerning offenses of attempting or conspiring to attempt any of the offenses listed herein;

(B) has an unsatisfied final judgment in any state or other jurisdiction;

(C) is in default on a guaranteed student loan (Education Code, §57.491); or

(D) is delinquent on child support obligations (Family Code, Chapter 232);

(2) for two years preceding the date of application, has a history in any state or other jurisdiction of any of the following:

(A) a federal or state tax lien;

(B) an eviction involving any property or space used as an agency; or

(C) an unresolved final Medicare or Medicaid audit exception; or

(3) for twelve months preceding the date of application, has a history in any state or other jurisdiction of any of the following:

(A) denial, suspension, or revocation of an agency license or a license for a health care facility;

(B) surrendering a license before expiration or allowing a license to expire instead of the licensing authority proceeding with enforcement action;

(C) a Medicaid or Medicare sanction or penalty relating to the operation of an agency or a health care facility;

(D) operating an agency that has been decertified in any state under Medicare or Medicaid; or

(E) debarment, exclusion, or involuntary contract cancellation in any state from Medicare or Medicaid.

§97.17. Application Procedures for a Renewal License.

(a) A license is valid for one year. In order to continue providing services to clients, an agency must renew its license.

(b) For each license period, an agency must provide services to at least one client.

(c) DADS does not require an agency to admit a client under each category authorized under the license as a condition for renewal of the license.

(d) An agency must document the provision of services and keep documentation readily available for review by a DADS surveyor.

(e) DADS sends notice of expiration of a license to an agency at least 60 days before the expiration date of the license.

(1) If an agency has not received notice of expiration from DADS at least 45 days before the expiration date, the agency must notify DADS and submit a written request for a renewal application for a license.

(2) An agency must submit to DADS a complete and correct renewal application postmarked at least 30 days before the expiration date of a license.

(3) All documents submitted with the renewal application must be notarized copies or originals.

(f) Upon receipt of a renewal application and the renewal license fee, DADS reviews the material to determine whether it is complete and correct. A complete and correct renewal application includes all documents and information that DADS requests as part of the application process. If DADS receives a partial fee, the renewal application and monies are returned.

(1) DADS processes the renewal application according to the time frames in §97.31 of this chapter (relating to Time Frames for Processing and Issuing a License).

(2) If an agency decides not to continue the application process for a renewal license after submitting the renewal application and the renewal license fee, the agency must submit to DADS a written request to withdraw the renewal application. DADS does not refund the renewal license fee.

(3) If an agency receives a notice from DADS that some or all of the information required by this section is missing or incomplete, the agency must submit the required information no later than 30 days after the date of the notice. If an agency fails to submit the required information within 30 days after the notice date, DADS considers the renewal application incomplete and denies the application. If DADS denies the renewal application, DADS does not refund the renewal license fee.

(g) If an agency fails to make a timely and sufficient renewal application at least 30 days before the expiration date of the license, the agency must cease operation on the date the license expires.

(1) If an agency makes a timely renewal application of a license in accordance with this section, and an action to revoke, suspend, or deny renewal of the license is pending, the agency may continue to operate, and the license is valid until the agency has had an opportunity for a formal hearing as described in §97.601 of this chapter (relating to Enforcement Actions). DADS issues a renewal license only if DADS determines the reason for the proposed action no longer exists.

(2) An agency whose license has been expired for 90 days or less may renew the license by paying DADS a renewal fee that is one and one-half times the normally required renewal fee established in §97.3 of this chapter (relating to License Fees). DADS notifies the agency in writing of a pending license expiration.

(3) An agency whose license has been expired for more than 90 days must apply for an initial license in accordance with §97.13

of this chapter (relating to Application Procedures for an Initial License).

(h) If a license holder fails to timely renew a license because the license holder is or was on active duty with the armed forces of the United States of America outside the state of Texas, the license holder may renew the license pursuant to this subsection.

(1) An individual having power of attorney from the license holder or other authority to act on behalf of the license holder may request renewal of the license. The renewal application must include a current address and telephone number for the individual requesting the renewal.

(2) An agency may request a renewal application before or after the expiration of the license.

(3) A copy of the official orders or other official military documentation showing that the license holder is or was on active military duty serving outside the state of Texas must be filed with DADS along with the renewal application.

(4) A copy of the power of attorney from the license holder or other authority to act on behalf of the license holder must be filed with DADS along with the renewal form.

(5) A license holder renewing under this subsection must pay the applicable renewal fee.

(6) A license holder is not authorized to operate the agency for which the license was obtained after the expiration of the license unless and until the license holder actually renews the license.

(7) This subsection applies to a license holder who is an individual or a partnership comprised of individuals, all of whom are or were on active duty with the armed forces of the United States of America serving outside the state of Texas.

§97.23. Change of Ownership.

(a) A license issued under this chapter may not be sold or assigned to another person.

(b) A change of ownership occurs when there is:

(1) a change of 50% or more in the ownership of the business organization or sole proprietorship that is licensed to operate the agency; or

(2) a change in the federal taxpayer identification number.

(c) A change of ownership for a parent agency is a change of ownership for the parent agency's branch office or alternate delivery site and requires the submittal of an initial application and license fee for the branch office or alternate delivery site.

(d) A change of ownership does not apply if an agency is a business entity and is simply amending its official documents to revise its name.

(e) For agencies licensed to provide licensed and certified home health services and licensed and certified hospice services, applicable federal laws and regulations relating to change of ownership or control apply in addition to the requirements of this section.

§97.27. Application and Issuance of a Branch Office License.

(a) An agency with a current license to provide licensed home health services, licensed and certified home health services, or personal assistance services may qualify for a branch office license if the parent agency:

(1) is found to be in substantial compliance with the statute and this chapter; and

(2) has no enforcement action pending against the license.

(b) Upon request, DADS furnishes a parent agency with an application packet for a branch office license.

(c) An agency must submit to DADS a complete and correct application packet and the required license fee for a branch office license in accordance with the instructions provided with the application packet. A complete and correct application packet includes all documents and information that DADS requests as part of the application process.

(d) DADS reviews an application packet for a branch office license to determine whether it is complete and correct.

(1) DADS processes an application packet for a branch office license according to the time frames in §97.31 of this chapter (relating to Time Frames for Processing and Issuing a License).

(2) If an agency receives a notice from DADS that some or all of the information required by this section is missing or incomplete, the agency must submit the required information no later than 30 days after the date of the notice. If an agency fails to submit the required information within 30 days after the notice date, DADS considers the application for a branch office license incomplete and denies the application. If DADS denies the application, DADS does not refund the license fee.

(e) A designated survey office conducts a review of an agency's request to establish a branch office. The survey office makes a recommendation to approve or disapprove the branch office request.

(f) DADS approves or denies the application for a branch office license after considering the designated survey office's recommendation. If DADS denies the application, DADS sends the agency a written notice:

(1) informing the agency of its decision; and

(2) providing the agency with an opportunity to appeal its decision through a formal hearing process as described in §97.601 of this chapter (relating to Enforcement Actions).

(g) CMS approves or denies the branch location if an agency is licensed to provide licensed and certified home health services.

(h) A branch office license expires on the same expiration date as the parent agency's license, and the agency may renew it with the parent agency's license.

(i) DADS mails the branch office license to the parent agency. The branch office must post the license in a conspicuous place on the licensed branch office premises.

(j) A branch office must comply with §97.321 of this title (relating to Standards for Branch Offices) and the additional standards that relate to the agency's authorized categories under the license.

(k) DADS may conduct a survey of a branch office after issuance of the license to verify compliance with the statute and this chapter.

§97.29. Application and Issuance of an Alternate Delivery Site License.

(a) An agency with a current license to provide hospice services may qualify for an alternate delivery site license if the parent agency:

(1) is found to be in substantial compliance with the statute and this chapter; and

(2) has no enforcement action pending against the license.

(b) Upon request, DADS furnishes a parent agency with an application packet for an alternate delivery site license.

(c) An agency must submit to DADS a complete and correct application packet and the required license fee for an alternate delivery site in accordance with instructions provided with the application packet. A complete and correct application packet includes all documents and information that DADS requests as part of the application process.

(d) DADS reviews an application packet for an alternate delivery site to determine whether it is complete and correct.

(1) DADS processes an application packet for an alternate delivery site according to the time frames in §97.31 of this chapter (relating to Time Frames for Processing and Issuing a License).

(2) If an agency receives a notice from DADS that some or all of the information required by this section is missing or incomplete, the agency must submit the required information no later than 30 days after the date of the notice. If an agency fails to submit the required information within 30 days after the notice date, DADS considers the application for an alternate delivery site license incomplete and denies the application. If DADS denies the application, DADS does not refund the license fee.

(e) A designated survey office conducts a review of an agency's request to establish an alternate delivery site. The survey office makes a recommendation to approve or deny the alternate delivery site request.

(f) If an agency provides licensed-only hospice services, DADS approves or denies the application for an alternate delivery site after considering the designated survey office's recommendation. If DADS denies the application, DADS sends the agency a written notice:

(1) informing the agency of its decision; and

(2) providing the agency with an opportunity to appeal its decision through a formal hearing process as described in §97.601 of this chapter (relating to Enforcement Actions).

(g) CMS approves or denies the alternate delivery site if an agency is licensed to provide licensed and certified hospice services.

(h) An alternate delivery site license expires on the same expiration date as the parent agency's license, and the agency may renew it with the parent agency's license.

(i) DADS mails an alternate delivery site license to the parent agency. The alternate delivery site must post the license in a conspicuous place on the licensed alternate delivery site premises.

(j) An alternate delivery site must comply with §97.403 of this chapter (relating to Standards Specific to Agencies Licensed to Provide Hospice Services) and §97.322 of this chapter (relating to Standards for Alternate Delivery Sites).

(k) The designated survey office conducts a survey after issuance of the license to verify compliance with §97.403 and §97.322 of this chapter.

(l) The designated survey office may recommend that a licensed alternate delivery site seek a license as a parent agency, under but not exclusive of the following conditions:

(1) the alternate delivery site is the hospice's principal place of business as defined in §97.2 of this chapter (relating to Definitions); or

(2) the alternate delivery site is located outside the geographical area served by the parent agency.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. MINIMUM STANDARDS FOR ALL HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

DIVISION 1. GENERAL PROVISIONS

40 TAC §97.201

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides DADS with the authority to adopt rules for licensing and regulation of home and community support services agencies.

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DIVISION 2. CONDITIONS OF A LICENSE

40 TAC §§97.210, 97.213 - 97.220

The amendments and new section are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation

and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides DADS with the authority to adopt rules for licensing and regulation of home and community support services agencies.

§97.210. Agency Operating Hours.

(a) An agency must adopt and enforce a written policy identifying the agency's operating hours.

(b) For the purposes of this section, the person in charge means the administrator, the designated alternate administrator, the supervising nurse, or the alternate supervising nurse.

(c) If an agency is closed during the agency's operating hours or between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, the person in charge must:

(1) post a notice in a visible location outside the agency that will provide information regarding how to contact the person in charge; and

(2) leave a message on an answering machine or similar electronic mechanism that will provide information regarding how to contact the person in charge.

§97.217. Agency Closure Procedures and Voluntary Suspension of Operations.

(a) Permanent closure. An agency must notify DADS in writing within five days before the permanent closure of the agency, branch office, or alternate delivery site.

(1) The agency must include in the written notice the reason for closing, the location of the client records (active and inactive), and the name and address of the client record custodian.

(2) If the agency closes with an active client roster, the agency must transfer a copy of the active client record with the client to the receiving agency in order to ensure continuity of care and services to the client.

(3) The agency must mail or return the initial license or renewal license to DADS at the end of the day that services ceased.

(4) If an agency continues to operate after the closure date specified in the notice, DADS may take enforcement action against the agency.

(b) Applicability. This subsection applies to an agency licensed to provide licensed home health services, personal assistance services, and licensed-only hospice services.

(1) Voluntary suspension of operations occurs when an agency voluntarily suspends its normal business operations for 10 or more consecutive days. A voluntary suspension of operations may not last longer than the licensure renewal period. If an agency voluntarily suspends operations, the agency must:

(A) discharge or arrange for backup services for active clients;

(B) provide written notification to the designated survey office at least five days before the voluntary suspension of operations or within two working days before the voluntary suspension of operations if an emergency occurs that is beyond the agency's control; and

(C) post a notice of voluntary suspension of operations on the entry door of the agency and leave a message on an answering machine or with an answering service that informs callers of the voluntary suspension of operations.

(2) An agency must notify the Home and Community Support Services Agencies Licensing Unit in writing no later than seven days after resuming operations.

§97.220. Service Areas.

(a) Licensed service area.

(1) An agency must identify its licensed service area.

(2) An agency must not provide services outside its licensed service area.

(b) Staffing. The agency must maintain adequate staff to provide services and to supervise the provision of services within the service area.

(c) Expansion of service area. An agency may expand its service area at any time during the licensure period.

(1) Unless exempted under paragraph (2) of this subsection, an agency must submit to DADS a written notice to expand its service area at least 30 days before the expansion. The notice must include:

(A) revised boundaries of the agency's original service area;

(B) the effective date of the expansion; and

(C) an updated list of management and supervisory personnel (including names), if changes are made.

(2) An agency is exempt from the 30-day written notice requirement under paragraph (1) of this subsection if DADS determines an emergency situation exists that would impact client health and safety. An agency must notify DADS immediately of a possible emergency. DADS determines if an exemption can be granted.

(d) Reduction of service area. An agency may reduce its service area at any time during the licensure period by sending DADS written notification of the reduction, the revised boundaries of the agency's original service area, and the effective date of the reduction.

(e) Branch office and alternate delivery site location. A branch office or alternate delivery site must be located within the parent agency's service area.

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DIVISION 2. CONDITIONS OF LICENSE

40 TAC §97.221

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides DADS with the authority to adopt rules for licensing and regulation of home and community support services agencies.

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DIVISION 3. AGENCY ADMINISTRATION

40 TAC §§97.241, 97.242, 97.245 - 97.247, 97.249, 97.250, 97.252, 97.253, 97.257

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides DADS with the authority to adopt rules for licensing and regulation of home and community support services agencies.

§97.241. Management.

(a) Agency policies. The license holder is responsible for the conduct of the agency and for the adoption, implementation, enforcement, and monitoring of adherence to the written policies required throughout this chapter. The license holder is also responsible for ensuring that the policies comply with the statute and the applicable provisions of this chapter and are administered to provide safe, professional, quality health care.

(b) Criminal conviction. The license holder, the controlling person, the affiliate, the administrator, or the alternate administrator must at no time during the licensure period be convicted of:

- (1) a crime listed in Health and Safety Code, §250.006 (relating to Convictions Barring Employment);
- (2) a crime relating to deceptive business practices;

(3) a misdemeanor of practicing any health-related profession without a required license;

(4) a crime under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(5) an offense under the Penal Code involving a client or client of a health care facility or agency; or

(6) a misdemeanor or felony offense under the Penal Code, as follows:

(A) Title 5, concerning offenses against the person;

(B) Title 7, concerning offenses against the property;

(C) Title 9, concerning offenses against public order and decency;

(D) Title 10, concerning offenses against public health, safety, and morals; or

(E) Title 4, concerning offenses of attempting or conspiring to attempt any of the offenses listed herein.

(c) Documentation. The license holder must ensure that all documents submitted to DADS or maintained by the agency pursuant to this chapter are accurate and do not misrepresent or conceal a material fact.

(d) Compliance with enforcement orders. The license holder must comply with an order of the DADS commissioner or other enforcement orders that may be imposed on the agency in accordance with the statute and this chapter.

§97.250. Investigations.

(a) Written policy. An agency must adopt and enforce a written policy relating to the agency's procedures for investigating complaints and reports of abuse, neglect, and exploitation. The policy must meet the requirements of this section.

(b) Reports of abuse, neglect, and exploitation (ANE).

(1) An agency must initiate an investigation of known and alleged acts of ANE by agency employees, including volunteers and contractors, immediately upon witnessing the act or upon receipt of the allegation.

(2) An agency must send a written report of the investigation to DADS state office no later than the tenth day after reporting the act to DADS and the Department of Family and Protective Services.

(3) An agency must complete the written report using the Provider Investigation form and include the following information:

(A) incident date;

(B) the alleged victim;

(C) the alleged perpetrator;

(D) any witnesses;

(E) the allegation;

(F) any injury or adverse affect;

(G) any assessments made;

(H) any treatment required;

(I) the investigation summary; and

(J) any action taken.

(c) Other investigations.

(1) An agency must investigate complaints made by a client, a client's family or guardian, or a client's health care provider, in accordance with this subsection, regarding:

- (A) treatment or care that was furnished by the agency;
- (B) treatment or care that the agency failed to furnish;

or

(C) a lack of respect for the client's property by anyone furnishing services on behalf of the agency.

(2) An agency must:

(A) document the receipt of the complaint and initiate a complaint investigation within 10 days after the agency's receipt of the complaint;

(B) document all components of the investigation; and

(C) complete the investigation and documentation within 30 days after the agency receives the complaint, unless the agency has and documents reasonable cause for a delay.

(d) Retaliation.

(1) An agency may not retaliate against a person for filing a complaint, presenting a grievance, or providing, in good faith, information relating to home health, hospice, or personal assistance services provided by the agency.

(2) An agency is not prohibited from terminating an employee for a reason other than retaliation.

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DIVISION 4. PROVISION AND COORDINATION OF TREATMENT AND SERVICES

40 TAC §§97.281 - 97.283, 97.285, 97.287, 97.288, 97.290, 97.291, 97.298 - 97.301

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides DADS with the authority to adopt rules

for licensing and regulation of home and community support services agencies.

§97.282. Client Conduct and Responsibility and Client Rights.

(a) An agency must adopt and enforce a written policy governing client conduct and responsibility and client rights in accordance with this section. The written policy must include a grievance mechanism under which a client can participate without fear of reprisal.

(b) An agency must protect and promote the client's rights.

(c) An agency must comply with the provisions of the Human Resources Code, Chapter 102, concerning the rights of the elderly.

(d) At the time of admission, an agency must provide each person who receives licensed home health services, licensed and certified home health services, hospice services, or personal assistance services with a written statement that informs the client that a complaint against the agency may be directed to the Department of Aging and Disability Services, DADS' Consumer Rights and Services Division, P.O. Box 149030, Austin, Texas 78714-9030, toll free 1-800-458-9858. The statement also may inform the client that a complaint against the agency may be directed to the administrator of the agency. The statement about complaints directed to the administrator also must include the time frame in which the agency will review and resolve the complaint.

(e) In advance of furnishing care to the client or during the initial evaluation visit before the initiation of treatment, an agency must provide each client or their legal representative with a written notice of all policies governing client conduct and responsibility and client rights.

(f) A client has the following rights:

(1) A client has the right to be informed in advance about the care to be furnished, the plan of care, expected outcomes, barriers to treatment, and any changes in the care to be furnished. The agency must ensure that written informed consent that specifies the type of care and services that may be provided by the agency has been obtained for every client, either from the client or their legal representative. The client or the legal representative must sign or mark the consent form.

(2) A client has the right to participate in the planning of the care or treatment and in planning changes in the care or treatment.

(A) An agency must advise or consult with the client or legal representative in advance of any change in the plan of care.

(B) A client has the right to refuse care and services.

(C) A client has the right to be informed, before care is initiated, of the extent to which payment may be expected from the client, third-party payers, and any other source of funding known to the agency.

(3) A client has the right to have assistance in understanding and exercising his rights. The agency must maintain documentation showing that it has complied with the requirements of this paragraph and that the client demonstrates understanding of his rights.

(4) A client has the right to exercise his rights as a client of the agency.

(5) A client has the right to have his person and property treated with consideration, respect, and full recognition of his individuality and personal needs.

(6) A client has the right to confidential treatment of his personal and medical records.

(7) A client has the right to voice grievances regarding treatment or care that is or fails to be furnished, or regarding the lack of respect for property by anyone who is furnishing services on behalf of the agency and must not be subjected to discrimination or reprisal for doing so.

(g) In the case of a client adjudged incompetent, the rights of the client are exercised by the person appointed by law to act on the client's behalf.

(h) In the case of a client who has not been adjudged incompetent, any legal representative may exercise the client's rights to the extent permitted by law.

§97.285. Infection Control.

An agency must adopt and enforce written policies addressing infection control, including the prevention of the spread of infectious and communicable disease. The policies must:

(1) ensure compliance by the agency, its employees, and its contractors with:

(A) the Communicable Disease Prevention and Control Act, Health and Safety Code, Chapter 81;

(B) the Occupational Safety and Health Administration (OSHA), 29 CFR Part 1910.1030 and Appendix A relating to Blood-borne Pathogens; and

(C) the Health and Safety Code, Chapter 85, Subchapter I, concerning the prevention of the transmission of human immunodeficiency virus and hepatitis B virus; and

(2) require documentation of infections that the client acquires while receiving services from the agency.

(A) If an agency is licensed to provide services other than personal assistance services, documentation must include the date that the infection was detected, the client's name, primary diagnosis, signs and symptoms, type of infection, pathogens identified, and treatment.

(B) If an agency is licensed to provide only personal assistance services, documentation must include the date that the infection was disclosed to the agency employee, the client's name, and treatment as disclosed by the client.

§97.288. Coordination of Services.

(a) An agency must adopt and enforce a written policy that requires effective coordination of care with all service providers involved in the care of a client, including physicians, contracted health care professionals, and other agencies.

(b) The agency must document the steps taken to meet subsection (a) of this section in the client record.

§97.291. Agency Dissolution.

An agency must adopt and enforce a written policy that describes the agency's written contingency plan.

(1) The plan must be implemented in the event of dissolution to assure continuity of client care.

(2) The plan must:

(A) be consistent with §97.295 of this title (relating to Client Transfer or Discharge Notification Requirements);

(B) include procedures for:

(i) notifying the client of the agency's dissolution;

(ii) documenting the notification;

(iii) carrying out the notification; and

(C) comply with §97.217(a)(2) of this chapter (relating to Agency Closure Procedures and Voluntary Suspension of Operations).

§97.300. Medication Administration.

(a) This section applies only to clients to whom agency staff administer medications.

(b) An agency must adopt and enforce a written policy for maintaining a current medication list and a current medication administration record.

(1) A client's practitioner must order administration of medication.

(2) An agency may incorporate a current medication list and medication administration record into one document.

(A) An agency must use the medication list to identify possible ineffective drug therapy or adverse reactions, significant side effects, drug allergies, and contraindications.

(B) An agency must document in the medication administration record or clinical notes any medication that is not administered and the reason it was not administered.

(3) An individual delivering care must report any adverse reaction to a supervisor and document this in the client's record on the day of occurrence. If the adverse reaction occurs after regular business hours, the individual delivering care must report the adverse reaction as soon as it is disclosed.

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DIVISION 5. BRANCH OFFICES AND ALTERNATE DELIVERY SITES

40 TAC §97.321, §97.322

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides DADS with the authority to adopt rules for licensing and regulation of home and community support services agencies.

§97.321. Standards for Branch Offices.

(a) A branch office operates as a part of the parent agency and must comply with the same regulations as the parent agency. The parent agency is responsible for ensuring that its branches comply with licensing standards.

(b) A branch office providing licensed and certified home health services must comply with the standards for certified agencies in §97.402 of this chapter (relating to Standards Specific to Licensed and Certified Home Health Services).

(c) The service area of a branch office must be located within the parent agency's service area.

(1) A branch office must not provide services outside its licensed service area.

(2) A branch office must maintain adequate staff to provide services and to supervise the provision of services within the service area.

(3) A branch office may expand its service area at any time during the licensure period.

(A) Unless exempted under subparagraph (B) of the paragraph, a branch office must submit to DADS a written notice to expand its service area at least 30 days before the expansion. The notice must include:

(i) revised boundaries of the branch office's original service area;

(ii) the effective date of the expansion; and

(iii) an updated list of management and supervisory personnel (including names), if changes are made.

(B) An agency is exempt from the 30-day written notice requirement under subparagraph (A) of this paragraph if DADS determines an emergency exists that would impact client health and safety. An agency must notify DADS immediately of a possible emergency. DADS determines if an exemption can be granted.

(4) A branch office may reduce its service area at any time during the licensure period by sending DADS written notification of the reduction, revised boundaries of the branch office's original service area, and the effective date of the reduction.

(d) A parent agency and a branch office providing home health or personal assistance services must meet the following requirements:

(1) The parent agency administrator or alternate administrator, or supervising nurse or alternate supervising nurse must conduct an on-site supervisory visit to the branch office at least monthly. The parent agency may visit the branch office more frequently considering the size of the service area and the scope of services provided by the parent agency. The supervisory visits must be documented and include the date of the visit, the content of the consultation, the individuals in attendance, and the recommendations of the staff.

(2) The original active clinical record must be kept at the branch office.

(3) The parent agency must approve all branch office policies and procedures. This approval must be documented and filed in the parent and branch offices.

(e) DADS issues or renews a branch office license for applicants who meet the requirements of this section.

(1) Issuance or renewal of a branch office license is contingent upon compliance with the statute and this chapter by the parent agency and branch office.

(2) DADS may take enforcement action against a parent agency license for a branch office's failure to comply with the statute or this chapter in accordance with Subchapter F of this chapter (relating to Enforcement).

(3) Revocation, suspension, denial, or surrender of a parent agency license will result in the same revocation, suspension, denial, or surrender of a branch office license for all branch office licenses of the parent agency.

(f) A branch office may offer fewer health services or categories than the parent office but may not offer health services or categories that are not also offered by the parent agency.

§97.322. Standards for Alternate Delivery Sites.

(a) An alternate delivery site must comply with §97.403 of this chapter (relating to Standards Specific to Agencies Licensed to Provide Hospice Services).

(b) An alternate delivery site must independently meet §97.403(c), (f)(1), and (i) of this chapter, and §97.301 of this chapter (relating to Client Records).

(c) An alternate delivery site must be established within the parent agency's service area.

(1) An alternate delivery site must not provide services outside its licensed service area.

(2) An alternate delivery site must maintain adequate staff to provide services and to supervise the provision of services within the service area.

(3) An alternate delivery site may expand its service area at any time during the licensure period.

(A) Unless exempted under subparagraph (B) of this paragraph, an alternate delivery site must submit to DADS a written notice to expand its service area at least 30 days before the expansion. The notice must include:

(i) revised boundaries of the alternate delivery site's original service area;

(ii) the effective date of the expansion; and

(iii) an updated list of management and supervisory personnel (including names), if changes are made.

(B) An agency is exempt from the 30-day written notice requirement under subparagraph (A) of this paragraph if DADS determines that an emergency exists that would impact client health and safety. An agency must notify DADS immediately of a possible emergency. DADS determines if an exemption can be granted.

(4) An alternate delivery site may reduce its service area at any time during the licensure period by sending DADS written notification of the reduction, revised boundaries of the alternate delivery site's original service area, and the effective date of the reduction.

(d) A parent agency and an alternate delivery site must meet the following requirements:

(1) The parent agency administrator or alternate administrator, or supervising nurse or alternate supervising nurse must conduct an on-site supervisory visit to the alternate delivery site at least monthly. The parent agency may visit the alternate delivery site more frequently considering the size of the service area provided by the parent agency. The supervisory visits must be documented and include the date of the visit, the content of the consultation, the individuals in attendance, and the recommendations of the staff.

(2) The original active clinical record must be kept at the alternate delivery site.

(3) The parent agency must approve all alternate delivery site policies and procedures. This approval must be documented and filed in the parent and alternate delivery sites.

(e) DADS issues or renews an alternate delivery site license for applicants who meet the requirements of this section.

(1) Issuance or renewal of an alternate delivery site license is contingent upon compliance with the statute and this chapter by the parent agency and alternate delivery site.

(2) DADS may take enforcement action against a parent agency license for an alternate delivery site's failure to comply with the statute or this chapter in accordance with Subchapter F of this chapter (relating to Enforcement).

(3) Revocation, suspension, denial or surrender of a parent agency license will result in the same revocation, suspension, denial or surrender of all alternate delivery site licenses of the parent agency.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. SURVEYS

40 TAC §97.501, §97.502

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides DADS with the authority to adopt rules for licensing and regulation of home and community support services agencies.

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SUBCHAPTER E. LICENSURE SURVEYS

DIVISION 1. GENERAL

40 TAC §§97.501, 97.503, 97.505, 97.507, 97.509

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides DADS with the authority to adopt rules for licensing and regulation of home and community support services agencies.

§97.501. *Survey Frequency.*

(a) At a minimum, DADS:

(1) conducts an initial survey after an agency has notified DADS of its readiness. See §97.521 of this chapter (relating to Requirements for an Initial Survey);

(2) conducts a survey of the agency within 18 months after conducting an initial survey and conducts subsequent surveys at least every 36 months thereafter;

(3) conducts a survey to investigate a complaint regarding the provision of licensed home health services, licensed and certified home health services, hospice services, or personal assistance services that is alleged to have violated this chapter or the statute; and

(4) conducts a survey to investigate a complaint regarding the provision of licensed and certified home health services or hospice services that is alleged to have violated federal requirements.

(b) DADS may conduct a survey for the renewal of a license or the issuance of a branch office or alternate delivery site license.

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DIVISION 2. THE SURVEY PROCESS

40 TAC §§97.521, 97.523, 97.525, 97.527

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides DADS with the authority to adopt rules for licensing and regulation of home and community support services agencies.

§97.521. *Requirements for an Initial Survey.*

(a) An agency must admit at least one client and initiate services within six months of receiving an initial license.

(b) An agency is not required to admit a client under each category authorized under a license to be surveyed by DADS. An agency seeking licensure to provide licensed home health services or licensed-only hospice services must have admitted and served at least one client in the respective category.

(c) An agency must submit a written request for an initial survey to the designated survey office at least six months before the expiration date of the initial license, unless an agency is exempt as described in subsection (f) of this section. The written request must include:

- (1) the date of admission of the first client; and
- (2) the name of the client.

(d) An agency must have the following information available and ready for review by a surveyor upon the surveyor's arrival:

(1) a list of clients who are receiving services or who have received services from the agency for each category of service licensed. The list must comply with the requirements of §97.293 of this chapter (relating to Client List and Services);

(2) the client records for each client admitted during the licensing period before the initial survey;

(3) all agency policies as required by this chapter; and

(4) all personnel records of agency employees.

(e) If an agency fails to meet the requirements of this section, DADS may propose to revoke or suspend an initial license.

(f) An initial survey is not required if an agency receives notice of accreditation from CHAP or JCAHO after the issuance of the initial license.

§97.523. *Personnel Requirements for a Survey.*

(a) For an initial survey, the administrator or alternate administrator must be present at the entrance conference, available in person or by telephone during the survey, and present in person at the exit conference.

(b) For a survey other than an initial survey, the administrator or alternate administrator must be available in person or by telephone during the entrance conference and the survey, and must be present in person at the exit conference.

(c) The supervising nurse or alternate supervising nurse must be available in person or by telephone, if necessary, to provide infor-

mation unique to the duties and functions of the position during the survey.

(d) If a required individual is unavailable during the survey process and is not at the agency when the surveyor arrives, the surveyor makes reasonable attempts to contact the individual.

(e) If a surveyor arrives during regular business hours and the agency is closed, an administrator, alternate administrator, or a designated agency representative must provide the surveyor entry to the agency within two hours after the surveyor's arrival at the agency. The administrator must designate in writing the agency representatives who may grant entry to a surveyor. The agency must comply with notice requirements described in §97.210 of this chapter (relating to Agency Operating Hours).

(f) If the surveyor is unable to contact a required individual or the agency fails to comply with subsection (e) of this section, the surveyor may recommend enforcement action against the agency.

(g) If compliance with this section would cause an interruption in client care being provided by the administrator, the alternate administrator, the supervising nurse, or the alternate supervising nurse, the administrator must contact its backup service provider to ensure continued client care.

§97.525. *Survey Procedures.*

(a) Before beginning a survey, a surveyor holds an entrance conference with the required agency personnel to explain the purpose of the survey and the survey process and provides the personnel an opportunity to ask questions.

(1) A surveyor:

(A) conducts at least three home visits to determine an agency's compliance with licensing requirements;

(B) reviews any agency records that the surveyor believes are necessary to determine an agency's compliance with licensing requirements; and

(C) evaluates an agency's compliance with each standard.

(2) If a surveyor requests an agency record that is stored at a location other than the survey site, an agency must provide the original record to the surveyor within eight working hours. Failure to comply may result in enforcement action as described in §97.507 of this chapter (relating to Agency Cooperation with a Survey).

(b) An agency accredited by CHAP or JCAHO must have the documentation of accreditation available at the time of a survey.

(c) An agency must provide the surveyor access to all agency records maintained by or on behalf of an agency.

(d) DADS keeps agency records confidential, except as allowed by Health and Safety Code, §142.009(d).

(e) A surveyor may remove original agency records from an agency only with the consent of the agency as provided in Health and Safety Code, §142.009(e).

(f) An agency must provide copies of agency records upon request by the surveyor.

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SUBCHAPTER F. ENFORCEMENT

40 TAC §§97.601, 97.602, 97.604

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides DADS with the authority to adopt rules for licensing and regulation of home and community support services agencies.

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40 TAC §97.601 - 97.604

The amendment and new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which provides DADS with the authority to adopt rules for licensing and regulation of home and community support services agencies.

§97.601. *Enforcement Actions.*

(a) Enforcement actions. DADS may take the following enforcement actions against an agency:

- (1) license suspension;

- (2) immediate license suspension;
- (3) license revocation;
- (4) immediate license revocation;
- (5) administrative penalties; and
- (6) denial of license application.

(b) Denial of license application. DADS may deny a license application for the reasons set out in §97.21 of this chapter (relating to Denial of an Application or a License).

(c) Suspension or revocation.

(1) DADS may suspend or revoke an agency's license if the license holder, the controlling person, the affiliate, the administrator, or the alternate administrator:

- (A) fails to comply with this chapter;
- (B) fails to comply with the statute; or

(C) engages in conduct that violates Occupations Code, Chapter 102 (relating to Solicitation of Patients).

(2) DADS may suspend or revoke an agency's license to provide licensed and certified home health services if the agency fails to maintain its certification qualifying the agency as a certified agency, as referenced in Health and Safety Code, §142.011(c).

(d) Administrative penalties.

(1) DADS may assess an administrative penalty against an agency in accordance with §97.602 of this chapter (relating to Administrative Penalties).

(2) DADS may consider the assessment of past administrative penalties when considering another enforcement action against an agency.

(e) Immediate licensure suspension or revocation. DADS may immediately suspend or revoke an agency's license when the health and safety of persons are threatened.

(1) If DADS issues an order for immediate suspension or revocation of the agency's license, DADS provides immediate notice to the controlling person, administrator, or alternate administrator of the agency by fax and either by certified mail with return receipt requested or hand-delivery. The notice includes:

- (A) the action taken;
- (B) legal grounds for the action;
- (C) the procedure governing appeal of the action; and
- (D) the effective date of the order.

(2) An order for immediate suspension or revocation goes into effect immediately.

(3) An agency is entitled to a formal administrative hearing not later than seven days after the effective date of the order for immediate suspension or revocation.

(4) The formal administrative hearing is conducted in accordance with the Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC, Chapter 357, Subchapter I.

(f) Opportunity to show compliance.

(1) Before revocation or suspension of an agency's license or denial of an application for the renewal of an agency's license, DADS gives the license holder:

(A) a notice by personal service or by registered or certified mail of the facts or conduct alleged to warrant the proposed action, with a copy sent to the agency; and

(B) an opportunity to show compliance with all requirements of law for the retention of the license by sending DADS' Regulatory Services office a written request. The request must:

(i) be postmarked within 10 days of the date of DADS' notice and be received in DADS' Regulatory Services office within 10 days of the date of the postmark; and

(ii) contain specific documentation refuting DADS' allegations.

(2) DADS limits its review to the documentation submitted by the license holder and information DADS used as the basis for its proposed action. An agency may not attend DADS' meeting to review the opportunity to show compliance. DADS gives a license holder a written affirmation or reversal of the proposed action.

(3) After an opportunity to show compliance, DADS sends a license holder a written notice that:

(A) informs the license holder of DADS' decision; and

(B) provides the agency with an opportunity to appeal DADS' decision through a formal hearing process.

(g) Notice of denial of application for license or renewal of a license, suspension or revocation of license. DADS sends an applicant or license holder notice by fax and either by certified mail with return receipt requested or hand-delivery of DADS' denial of an application for an initial license or renewal of a license, suspension of a license or revocation of a license.

(h) Formal appeal. An applicant or license holder has the right to make a formal appeal after receipt of DADS' notification of denial of an application for an initial license or renewal of a license and suspension or revocation of a license.

(1) An agency must request a formal administrative hearing within 20 days of receipt of DADS' notice of denial of an application for an initial license or renewal of a license, suspension of a license or revocation of a license. To make a formal appeal, the applicant or agency must comply with the formal hearing procedures in 1 TAC, Chapter 357, Subchapter I.

(2) DADS presumes receipt of DADS' notice to occur on the tenth day after the notice is mailed to the last known address unless another date is reflected on the return receipt.

(3) If an agency does not meet the deadline for requesting a formal hearing, the agency has lost its opportunity for a formal hearing, and DADS takes the proposed action.

(4) A formal administrative hearing is conducted in accordance with Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC, Chapter 357, Subchapter I.

(5) Except for the denial of an application for an initial license, if an agency appeals, the license remains valid until all appeals are final, unless the license expires without a timely application for renewal submitted to DADS.

(6) If an agency appeals, the enforcement action will take effect when all appeals are final and the proposed enforcement action is upheld. If the agency wins the appeal, the proposed action does not happen.

(7) If DADS suspends a license, the suspension remains in effect until DADS determines that the reason for suspension no longer exists. A suspension may last no longer than the term of the license.

(A) DADS conducts a survey of the agency before making a determination to recommend cancellation of a suspension.

(B) If suspension overlaps a renewal date, the suspended license holder must comply with the renewal procedures in this chapter; however, DADS does not renew the license until it determines the reason for suspension no longer exists.

(8) If DADS revokes or does not renew a license and one year has passed following the effective date of revocation or denial of licensure renewal, a person may reapply for a license by complying with the requirements and procedures in this chapter in effect at the time of reapplication. DADS does not issue a license if the reason for revocation or nonrenewal continues to exist.

(i) Agency dissolution. Upon suspension, revocation, or nonrenewal of a license, the license holder must:

(1) return the original license to DADS; and

(2) follow its contingency plan in accordance with §97.291 of this title (relating to Agency Dissolution).

§97.602. *Administrative Penalties.*

(a) Assessing penalties. DADS may assess an administrative penalty against a licensed agency if the agency:

(1) violates the statute, Chapter 102 of the Occupations Code, or a provision of this chapter for which a penalty may be assessed;

(2) violates Health and Safety Code, §166.004; or

(3) fails to correct a violation in accordance with an approved plan of correction.

(b) Criteria for assessing penalties. DADS uses a schedule of appropriate and graduated penalties established in this subchapter to determine which violations warrant an administrative penalty.

(1) The schedule of appropriate and graduated penalties for each violation is based on the following criteria:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation, and the hazard of the violation to the health or safety of clients;

(B) the history of previous violations by a person or a controlling person with respect to that person;

(C) whether the affected agency identified the violation as part of its internal quality assurance process and made a good faith, substantial effort to correct the violation in a timely manner;

(D) the amount necessary to deter future violations;

(E) efforts made to correct the violation; and

(F) any other matters that justice may require.

(2) The schedule of appropriate and graduated penalties established in this section includes Severity Level A violations and Severity Level B violations.

(A) A Severity Level A violation is a minor violation.

(B) A Severity Level B violation is a violation that:

(i) results in serious harm to or death of a client;

(ii) constitutes a serious threat to the health or safety of a client; or

(iii) substantially limits the agency's capacity to provide care.

(c) Penalty range. An administrative penalty may not be less than \$100 or more than \$1,000 for each violation.

(1) For a Severity Level A violation, the penalty range is \$100 - \$250.

(2) For a Severity Level B violation that:

(A) results in serious harm to or death of a client, the penalty is \$1,000;

(B) constitutes a serious threat to the health or safety of a client, the penalty range is \$500 - \$1,000; or

(C) substantially limits the agency's capacity to provide care, the penalty range is \$500 - \$750.

(d) Penalty calculation and assessment.

(1) Each day that a violation occurs before the date on which an agency receives written notice of the violation is considered one violation.

(2) Each day that a violation occurs after the date on which an agency receives written notice of the violation constitutes a separate violation.

(3) A violation may be one or more Severity Level A violations, one or more Severity Level B violations, or a combination of Severity Level A and B violations. If the same survey finding constitutes both a Level A violation and a Level B violation, DADS only assesses the administrative penalty for the Level B violation.

(4) DADS may assess the greater amount of an administrative penalty if an agency violates more than one rule with the same act or failure to act.

(5) DADS may assess an administrative penalty even if an agency corrects the violation within the required time frame if the agency failed to correct the violation from the prior survey, provided the prior survey occurred no more than three years before the subsequent survey.

(6) If an agency fails to correct a violation and the uncorrected violation was cited more than three years before the repeated citation of the same violation, DADS does not assess an administrative penalty.

(e) Schedule of appropriate and graduated penalties.

(1) Severity Level A violations. DADS may assess a separate Level A administrative penalty for a violation of any of the rules listed in the following table.

Figure: 40 TAC §97.602(e)(1)

(2) Severity Level B violations. DADS may assess a separate Level B administrative penalty for a violation of any of the rules listed in the following table.

Figure: 40 TAC §97.602(e)(2)

(f) Opportunity to correct. DADS gives an agency an opportunity to correct a violation in accordance with the time frames established in §97.527(g)(2) of this chapter (relating to Post-Survey Procedures).

(g) Proposal of administrative penalties.

(1) If DADS assesses an administrative penalty, DADS provides a written notice of violation letter to an agency. The notice includes:

(A) a brief summary of the violation;

(B) the amount of the proposed penalty; and

(C) a statement of the agency's right to a formal administrative hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(2) An agency may accept DADS' determination not later than 20 days after the date on which the agency receives the notice of violation letter, including the proposed penalty, or may make a written request for a formal administrative hearing on the determination.

(A) If an agency notified of a violation accepts DADS' determination, the DADS commissioner or the DADS commissioner's designee issues an order approving the determination and ordering that the agency pay the proposed penalty.

(B) If an agency notified of a violation does not accept DADS' determination, the agency must submit to the Health and Human Services Commission a written request for a formal administrative hearing on the determination and must not pay the proposed penalty. Remittance of the penalty to DADS is deemed acceptance by the agency of DADS' determination, is final, and waives the agency's right to a formal administrative hearing.

(C) If an agency notified of a violation fails to respond to the notice of violation letter within the required time frame, the DADS commissioner or the DADS commissioner's designee issues an order approving the determination and ordering that the agency pay the proposed penalty.

(D) If an agency requests a formal administrative hearing, the hearing is held in accordance with the statute, §§142.0172 - 142.0173, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I.

(h) Other enforcement actions. DADS may propose other enforcement actions in addition to assessing an administrative penalty.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 16, 2006.

TRD-200600853

Phoebe Knauer

General Counsel

Department of Aging and Disability Services

Effective date: June 1, 2006

Proposal publication date: October 14, 2005

For further information, please call: (512) 438-3734



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Credit Union Department

Title 7, Part 6

The Credit Union Commission (commission) has completed the review of Texas Administrative Code, Title 7, Chapter 93, §§93.101 relating to scope; definitions; severability; 93.201 relating to party status; 93.202 relating to computation of time; 93.203 relating to ex parte communications; 93.204 relating to presiding officer or body; 93.205 relating to notice of hearing; 93.206 relating to default; 93.207 relating to service; 93.208 relating to delegation of authority; 93.209 relating to subpoenas; 93.210 relating to protective orders and motions to compel; 93.211 relating to administrative record; 93.212 relating to proposal for decision; 93.213 relating to appearance and representation; 93.302 relating to referral to ADR; 93.303 relating to hearings of applications to incorporate, amend bylaws or merge or consolidate; 93.304 relating to appeals of applications for certificates of authority; 93.305 relating to appeals of all other applications for which no specific procedure is provided by this title; 93.401 relating to appeals of cease and desist orders and orders of removal; 93.402 relating to stays; 93.501 relating to requests for hearing to appeal on order of conservation; 93.502 relating to retention of attorney; 93.601 relating to motion for appeal to the commission; 93.602 related to decision by the commission; 93.603 related to oral arguments before the commission; 93.604 related to motion for rehearing; and 93.605 related to final decision and appeals. Notice of the proposed review and a request for comments was published in the November 18, 2005, issue of the *Texas Register* (30 TexReg 7747).

The commission received no comments with respect to these rules. The Credit Union Department believes that the reasons for initially adopting these rules continue to exist. The commission finds that the reasons for initially adopting 7 TAC §§93.101, 93.201, 93.202, 93.203, 93.204, 93.205, 93.206, 93.207, 93.208, 93.209, 93.210, 93.211, 93.212, 93.213, 93.302, 93.303, 93.304, 93.305, 93.401, 93.402, 93.501, 93.502, 93.601, 93.602, 93.603, 93.604, and 93.605 continue to exist and readopts these sections without changes, pursuant to the requirements of Government Code, §2001.039.

TRD-200600904

Harold E. Feeney
Commissioner
Credit Union Department
Filed: February 21, 2006



Texas Department of Housing and Community Affairs

Title 10, Part 1

In accordance with the proposed rule review published in the January 28, 2005, issue of the *Texas Register* (30 TexReg 413) and the requirements of Texas Government Code, §2001.039, the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (Department) has conducted a review of all rule sections in 10 TAC Chapter 80, Manufactured Housing, and readopts administrative rules with changes.

The Department conducted a thorough review of Chapter 80 to determine whether the rules were obsolete, whether the rules reflected current legal and policy considerations, and whether the rules reflected current procedures of the Department. As part of the review process and in conjunction with changes made as a result of the 79th Legislative Session, rule amendments were proposed and published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4550) and the November 4, 2005, issue of the *Texas Register* (30 TexReg 7112) in accordance with requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The Department did not receive comments specifically related to the rule review; however, the Department did receive comments in the public comment period during the proposed rule making process.

The public comments are addressed with the adopted amendments that are published in the November 11, 2005, issue of the *Texas Register* (30 TexReg 7434) and the December 30, 2005, issue of the *Texas Register* (30 TexReg 8871).

The Department has determined that the rules, as amended, are essential in accomplishing the provisions of Texas Occupations Code, Chapter 1201. The rules are readopted with changes in accordance with Texas Government Code, §2001.039.

TRD-200600883

Timothy K. Irvine
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Filed: February 17, 2006



Texas Department of Savings and Mortgage Lending

Title 7, Part 4

The Finance Commission of Texas ("Commission"), on behalf of the Texas Department of Savings and Mortgage Lending, has completed the review of Texas Administrative Code, Title 7, Chapter 80 (§§80.1 - 80.23), relating to Mortgage Broker and Loan Officer Licensing, as noticed in the November 18, 2005, issue of the *Texas Register* (30 TexReg 7748).

No comments were received regarding the substance of these rules or whether the reason for adopting these rules continues to exist.

The Texas Department of Savings and Mortgage Lending, which administers these rules, finds that the reason for adopting these rules continues to exist and readopts these rules without change in accordance with the requirements of the *Government Code*.

TRD-200600891

John Fleming
General Counsel
Texas Department of Savings and Mortgage Lending
Filed: February 21, 2006

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 40 TAC §97.602(e)(1)

SEVERITY LEVEL A VIOLATIONS \$100 - \$250 per violation	
Rule Cite	Subject Matter
§97.23	Change of ownership.
§97.25(a)	Application for an initial license after a change of ownership.
§97.212	Prohibiting material alteration of a license.
§97.213(a)-(b) separate penalties	Agency relocation.
§97.214(a)-(b) separate penalties	Notification procedures for reporting a change in agency telephone number and agency operating hours.
§97.215(a)(1)-(3) separate penalties	Notification procedures for reporting an agency name change.
§97.216	Change in agency certification or accreditation status.
§97.217(b)(1)-(2) separate penalties	Procedures for notifying DADS of a voluntary suspension of operations.
§97.218	Agency organizational changes.
§97.219(1)(A)-(B) separate penalties	Procedure for adding or deleting a category of service to the agency's license.
§97.220(a)(1)-(2) separate penalties	Providing services only within an agency's licensed service area.
§97.220(c)	Providing a written notification of an expansion of an agency's licensed service area.
§97.220(d)	Providing written notification of a reduction of an agency's licensed service area.
§97.220(e)	Location requirements for a branch office and an alternate delivery site in the parent agency's service area.
§97.242(a)-(b)	Maintaining a current written description of the agency's organizational structure.
§97.243(a)	Appointing an administrator.
§97.243(a)	Designating a qualified alternate administrator.
§97.243(a)(1)(A)-(G) separate penalties	Responsibilities of the administrator.
§97.243(a)(2)	Requirement that the administrator or designee be available during the agency's operating hours.
§97.243(c)(1)-(2) separate penalties	Adoption of a written policy for the supervision of branch offices or alternate delivery sites, if established.
§97.244(a)(1)(A)-(C)-(2)(A)-(D) separate penalties	Qualifications and conditions of the agency administrator and alternate or designee.
§97.244(b)(1)-(3) separate penalties	Qualifications of the supervising nurse and designated alternate.
§97.245(1)-(9) separate penalties	Adoption of written policies governing all personnel staffed by the agency.
§97.246(a)(1)-(7)-(b) separate penalties	An agency's personnel records and content of such records.
§97.248(a)-(b)(1)-(4) separate penalties	The use of volunteers in an agency.

SEVERITY LEVEL A VIOLATIONS \$100 - \$250 per violation	
Rule Cite	Subject Matter
§97.249(b)	Adoption of a written policy for the reporting of alleged acts of abuse, neglect, and exploitation of clients and reportable conduct by an employee.
§97.250(a)	Adoption of a written policy covering procedures for investigating known and alleged acts of abuse, neglect, and exploitation and other complaints.
§97.250(d)	Prohibiting an agency from retaliating against a person for filing a complaint, presenting a grievance, or providing, in good faith, information the agency.
§97.251	Adoption of a written policy for ensuring that all professional disciplines comply with their respective professional practice acts or title acts for reporting and peer review.
§97.252(3)-(4) separate penalties	An agency's business records.
§97.253(a)-(d) separate penalties	Adoption of a written policy describing whether an agency will conduct drug testing of employees that describes the method and provides a copy of the policy.
§97.254	Adoption of a written policy for ensuring that the agency submits accurate billings and insurance claims.
§97.255	Adoption of a written policy for prohibition of illegal remuneration for securing or soliciting clients or patronage.
§97.256	Adoption of a written policy that describes an agency's plan for publicly known natural disaster preparedness.
§97.281(1)-(16) separate penalties	Adoption of a written policy that specifies the agency's client care practices.
§97.282(1)-(12) separate penalties	Adoption of a written policy governing client conduct and responsibility and client rights.
§97.283	Adoption of a written policy for compliance with the Advance Directives Act, Health and Safety Code, Chapter 166.
§97.284	Adoption of a written policy for complying with the Clinical Laboratory Improvement Amendments of 1988, 42 USC, §263a, Certification of Laboratories (CLIA 1988).
§97.285(1)-(2) separate penalties	Adoption of a written policy that addresses infection control.
§97.286(a)	Adoption of a written policy for safe handling and disposal of biohazardous waste and materials, if applicable.
§97.288(a)	Adoption of a written policy that all service providers involved in the care of a client effectively coordinate the client's care.
§97.290(a)(1)-(2) separate penalties	Adoption of a written policy for ensuring that backup services are available when an agency employee or contractor is not available to deliver the services.
§97.290(b)	Adoption of a written policy for ensuring that clients are educated in how to access care from the agency or another health care provider after regular business hours.
§97.291(1)-(2)(A)-(C) separate penalties	Adoption of a written policy for an agency's written contingency plan.

SEVERITY LEVEL A VIOLATIONS \$100 - \$250 per violation	
Rule Cite	Subject Matter
§97.292(a)(1)-(7)-(b) separate penalties	Providing a client or a client's family with a written agreement for services, ensuring appropriate content of the agreement, obtaining an acknowledgement of receipt, and ensuring that the acknowledgement is in the client's record.
§97.293(1)-(2) separate penalties	Maintaining a current list of clients for each category of service licensed.
§97.294	Adoption of a written policy for establishing a time frame for the initiation of care or services.
§97.295(c)	Documentation requirements pertaining to an agency's transfer or discharge of a client.
§97.296(a)	Adoption of a written policy that states whether physician delegation will be honored by the agency.
§97.298	Adoption of a written policy for ensuring compliance with rules adopted by the Board of Nurse Examiners for the State of Texas in 22 TAC, Chapter 224 (Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments) and 22 TAC, Chapter 225 (RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).
§97.299	Adoption of a written policy for ensuring compliance with rules of the Board of Nurse Examiners adopted at 22 TAC Chapters 211-226 (Nursing Continuing Education, Licensure, and Practice in the State of Texas).
§97.300(b)	Adoption of a written policy for maintaining a current medication list and a current medication administration record.
§97.301(a)(1)-(9)(A)-(P) separate penalties	Requirements for maintaining an agency's client records.
§97.301(b)(1)-(3) separate penalties	Adoption of a written policy for retention of records.
§97.302	Adoption of a written policy for pronouncement of death if that function is carried out by an agency registered nurse.
§97.303(1), (2)(A)-(B), (3)(A)-(G) separate penalties	Standards for possession of sterile water or saline, certain vaccines or tuberculin, and certain dangerous drugs.
§97.321(a)	Branch office compliance with the regulations of its parent agency.
§97.321(c)(1)	Providing services only within a branch office licensed service area.
§97.321(c)(3)(A)-(B) separate penalties	Providing a written notification of an expansion of a branch office service area.
§97.321(c)(4)	Providing written notification of a reduction of a branch office licensed service area.
§97.321(d)(1)-(3) separate penalties	Requirements for branch offices.
§97.321(f)	Requirement prohibiting branch offices from providing services not offered by the parent agency.
§97.322(a)	Alternate delivery site compliance with hospice services standards.
§97.322(b)	An alternate delivery site's independent compliance with §97.403(c), (f)(1), (i), and §97.301.

SEVERITY LEVEL A VIOLATIONS \$100 - \$250 per violation	
Rule Cite	Subject Matter
§97.322(c)(1)	Providing services only within an alternate delivery site licensed service area.
§97.322(c)(3)(A)-(B) separate penalties	Providing a written notification of an expansion of an alternate delivery site service area.
§97.322(c)(4)	Providing written notification of a reduction of an alternate delivery site licensed service area.
§97.322(d)	Requirements for hospices and alternate delivery sites.
§97.401(f)	The use of home health aides.
§97.402(b) separate penalties	Requirement for implementing a home health aide training and competency program.
§97.403(b)	Restriction on use of the word "hospice" in a title or description of a facility, organization, program, service provider, or services without a license.
§97.403(f)(4)	Retaining responsibility for payment for services.
§97.403(j)	Requirement that reassessment of a client must not reduce core services.
§97.403(k)	Informing the client of the availability of short-term inpatient care.
§97.403(l)	Making and documenting efforts to arrange for visits of clergy and other members of spiritual and religious organizations.
§97.403(u)(4)	Specifying the persons authorized to administer medications in the client's plan of care.
§97.403(w)(5)-(6), and (8) separate penalties	Physical plant requirements in a freestanding hospice that provides inpatient care.
§97.403(w)(11)(A)-(D) separate penalties	Providing and supervising meal service in a freestanding hospice that provides inpatient care.
§97.404(e)	Requirement that an agency develops operational policies that are considerate of the principles of individual and family choice and control, functional need, and accessible and flexible services.
§97.404(f)(1)-(3) separate penalties	Additional requirements for maintaining client records in an agency that provides personal assistance services.
§97.404(g)	Adoption of a written policy that addresses the supervision of agency personnel with input from the client or family on the frequency of supervision.
§97.404(g)(1)-(2)	Conditions and qualifications for supervision of agency personnel delivering personal assistance services.
§97.405(d)(1)-(2) separate penalties	Requirement for individual personnel files on all physicians.
§97.405(g)	A written transfer agreement with a local hospital for an agency that provides home dialysis services.
§97.405(h)	An agreement with a licensed end stage renal disease facility to provide backup outpatient dialysis services.
§97.405(j)	Ensuring that names of clients awaiting a donor transplant are entered in the recipient registry program.
§97.405(s)(1)-(7) separate penalties	Additional requirements for maintaining client records in an agency that provides home dialysis services.
§97.405(v)(1)-(2) separate penalties	Development of a written preventive maintenance program for home dialysis equipment.

SEVERITY LEVEL A VIOLATIONS \$100 - \$250 per violation	
Rule Cite	Subject Matter
§97.405(z)(1)-(7) separate penalties	Adoption of policies and procedures for emergencies addressing fire, natural disaster, and medical emergencies required of an agency that provides home dialysis services.
§97.406(1)	Adoption of a written policy for the provision of psychoactive treatments, if applicable.
§97.521(a)	Requirement for initiation of services for receiving an initial license.
§97.523(a)	Staff availability for the initial survey.
§97.523(b)	Staff availability for survey other than the initial survey.
§97.523(e)	Providing surveyor entry to the agency during regular business hours and within two hours of the surveyor's arrival at the agency.
§97.525(a)(2)	Availability of agency records.
§97.525(c)	Providing surveyor access to agency records.
§97.525(f)	Providing copies of agency records.
§97.527(b) separate penalties	Providing surveyor with audio recording of the exit conference if made by the agency.
§97.527(c) separate penalties	Providing surveyor with video recording of the exit conference if made by the agency.
§97.527(g)(1)	Time frame for submitting a plan of correction.
§97.527(g)(2)(A)-(D) separate penalties	Time frame for correcting a violation.
§97.527(g)(4)(A)	Time frame for submitting a revised plan of correction.

Figure: 40 TAC §97.602(e)(2)

SEVERITY LEVEL B VIOLATIONS \$500 - \$1,000 per violation	
Rule Cite	Subject Matter
§97.220(b)	Maintaining adequate staff to provide services and supervise the provision of services within the service area.
§97.241(a), (c), (d) separate penalties	Management responsibilities.
§97.243(a)	Appointing an agency administrator and an alternate or designee.
§97.243(a)(1)-(2)	Duties of an agency administrator.
§97.243(b)(3)(A)-(D) separate penalties	Supervisory responsibilities of the supervising nurse or designee.
§97.243(b)(4)	Allowing the supervising nurse to be the administrator if the supervising nurse meets the qualifications of the administrator.
§97.243(b)(5)	Requirements for the supervision of physical, occupational, speech, or respiratory therapy; medical social services; or nutritional counseling.
§97.243(c)(1)-(2) separate penalties	Adoption of a written policy for the supervision of branch offices or alternate delivery sites, if established.
§97.244(a)(1)(A)-(C)-(2) (A)-(D) separate penalties	Qualifications and conditions of the agency administrator and alternate or designee.
§97.244(b)(1)-(3) separate penalties	Qualifications of the supervising nurse and designated alternate.
§97.247(a)-(c) separate penalties	Verification of employability for unlicensed persons (criminal history checks, nurse aide registry, and employee misconduct registry).
§97.249(c)	Reporting alleged acts of abuse, neglect, and exploitation of clients.
§97.250 (b) and (c)(1)-(3) separate penalties	Enforcement of an agency's written policy for investigation of known and alleged acts of abuse, neglect, and exploitation and other complaints.
§97.251	Compliance with the agency's written policy to ensure that all professional disciplines comply with their respective professional practice acts or title acts for reporting and peer review.
§97.252(1)-(2)	An agency's financial ability to carry out its functions.
§97.281	Enforcement of a written policy for client care practices.
§97.282	Compliance with an agency policy on client conduct and responsibility and client rights.
§97.283(a)(2)	Requirement for providing a written notice of the agency's policy on advance directives.
§97.284	Compliance with the Clinical Laboratory Improvement Amendments of 1988.
§97.285(1)(A)-(C), (2) separate penalties	Enforcement and compliance with the agency's written policies on infection control.
§97.286(b)	Compliance with 25 TAC §§1.131-1.137 concerning the Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities.
§97.287(a)(1)-(3), (b), (c) separate penalties	An agency's Quality Assessment and Performance Improvement Program.

SEVERITY LEVEL B VIOLATIONS \$500 - \$1,000 per violation	
Rule Cite	Subject Matter
§97.288(a)-(b) separate penalties	Compliance with an agency's written policy for coordination of services and documentation requirements.
§97.289(a)-(b) separate penalties	An agency's use of and agreement with independent contractors and arranged services.
§97.290(a)	Ensuring that backup services are available when needed.
§97.290(b)	Ensuring that clients are educated in how to access care after hours.
§97.292(a)(1)-(7)-(b) separate penalties	Providing a client or a client's family with a written agreement for services, ensuring appropriate content of the agreement, obtaining an acknowledgement of receipt, and ensuring that the acknowledgement is in the client's record.
§97.295(a)	An agency's transfer or discharge of a client.
§97.296(a)-(b)(1)-(6) separate penalties	Enforcement of an agency's policy regarding acceptance of physician delegation orders.
§97.297(1)-(2)(A)-(B) separate penalties	Adoption and enforcement of a written policy describing protocols and procedures agency staff must follow when receiving physician orders, if applicable.
§97.298	Enforcement of a written policy for ensuring compliance with the rules adopted by the Board of Nurse Examiners for the State of Texas in 22 TAC, Chapter 224 (Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments) and 22 TAC, Chapter 225 (RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).
§97.300(b)	The administration of medication.
§97.303	The possession of sterile water or saline, certain vaccines or tuberculin, and certain dangerous drugs.
§97.321(c)(2)	Maintaining adequate staff to provide and supervise services at a branch office.
§97.322(c)(2)	Maintaining adequate staff to provide and supervise services at an alternate delivery site.
§97.401(b)	Acceptance of a client for home health services and the initiation of services.
§97.401(d)	Requirement that qualified personnel provide and supervise all services.
§97.401(e)	Requirement that all staff providing services, delegation, and supervision be employed by or be under contract with the agency.
§97.401(g)	Age and competency of unlicensed persons providing licensed home health services.
§97.402(a)	Compliance with the Medicare Conditions of Participation (Social Security Act, Title 42, Code of Federal Regulations, Part 484.)
§97.402(c)	Compliance with §97.701(f) of this title (relating to Home Health Aides) for an agency that implements a competency evaluation program.
§97.403(a)	Compliance with the Social Security Act and the regulations in Title 42, Code of Federal Regulations, Part 418.
§97.403(c)(1)-(8) separate penalties	Adoption of a written policy for the provision of hospice services.

SEVERITY LEVEL B VIOLATIONS \$500 - \$1,000 per violation	
Rule Cite	Subject Matter
§97.403(d)(1)-(3) separate penalties	Requirement and conditions of the medical director for an agency that provides hospice services.
§97.403(e)(1)(A)-(D) separate penalties	Composition of an interdisciplinary team or teams.
§97.403(e)(2)(A)-(D) separate penalties	Responsibilities of the interdisciplinary team.
§97.403(e)(4)	Designating a registered nurse to coordinate implementation of the plan of care for each client.
§97.403(f)(1)	Ensuring continuity of client and family care in home and outpatient and inpatient settings.
§97.403(f)(2)(A)-(F) separate penalties	Contract requirements for providing arranged services.
§97.403(f)(3)	Professional management responsibility for arranged services.
§97.403(f)(5)(A)-(E) separate penalties	Ensuring that inpatient care is furnished only in a licensed facility and according to contract requirements.
§97.403(g)(1)-(3) separate penalties	Time requirements for contacting the client or client's representative, performing the initial health assessment visit, and initiation of services.
§97.403(h)	Performing and making available to each client a comprehensive health assessment that identifies the client's needs.
§97.403(h)(1)	Completing the comprehensive health assessment in a timely manner.
§97.403(h)(2)(A)-(C) separate penalties	Composition of the comprehensive health assessment.
§97.403(h)(3)(A)-(B) separate penalties	Requirement for updating and revising the comprehensive health assessment.
§97.403(i)(1)-(3)(A)-(G) and (4) separate penalties	Requirements for a written plan of care.
§97.403(m)	Ensuring that all core services are provided, and requirements for using contracted staff, if necessary.
§97.403(n)(1)-(3) separate penalties	Requirements for providing nursing care and services.
§97.403(o)	Qualifications of the social worker performing hospice services.
§97.403(p)	Requirements for ensuring that general medical needs of clients are met.
§97.403(q)(1)-(4) separate penalties	Requirements for providing counseling services.
§97.403(r)	Requirements for providing services, maintaining a system for ensuring identification of client needs, communication across all disciplines, and integration of services.
§97.403(s)	Requirements for having therapy services available.
§97.403(t)	Requirements for having home health aide and homemaker services available.
§97.403(t)(1)-(2) separate penalties	Requirements for RN supervisory visits to assess aide services.
§97.403(u)(1)-(3)(A)-(D) separate penalties	Requirements for providing medical supplies, appliances, and medications, as needed, for palliation and management of terminal illness and related conditions.

SEVERITY LEVEL B VIOLATIONS \$500 - \$1,000 per violation	
Rule Cite	Subject Matter
§97.403(v)	Requirements that inpatient care be available for pain control, symptom management, and respite.
§97.403(w)(1)(A)-(B) separate penalties	Requirements for having on-site 24-hour nursing services provided by RNs and LVNs.
§97.403(w)(2)	Having a written plan in the event of a disaster.
§97.403(w)(3)	Meeting all federal, state, and local laws, regulations, and codes pertaining to health and safety.
§97.403(w)(4)(A)-(B) separate penalties	Meeting the National Fire Protection Association Life Safety Code for fire in buildings and structures.
§97.403(w)(9)	Having available at all times a quantity of linen essential for proper care of clients and requirements to prevent the spread of infection on linens.
§97.403(w)(10)	Making provisions for isolating clients with infectious diseases.
§97.403(w)(12)(A)-(I) separate penalties	Methods and procedures for dispensing and administering medications.
§97.404(c)	Qualifications of agency staff performing personal assistance services.
§97.404(d)(1)-(4)	Tasks authorized under a personal assistance services license category.
§97.404(h)	Performance of gastrostomy tube feedings and medication administration for an agency that provides personal assistance services.
§97.405(a)	Requirements for agencies that provide peritoneal dialysis or hemodialysis services.
§97.405(c)(1)-(2) separate penalties	Qualifications and responsibilities of the medical director for an agency that provides home dialysis services.
§97.405(e)(1)(A)-(C) separate penalties	Provision and supervision of nursing services for an agency that provides home dialysis services.
§97.405(e)(2)	Provision of nutritional counseling for an agency that provides home dialysis services.
§97.405(e)(3)	Provision of medical social services for an agency that provides home dialysis services.
§97.405(f)(1)(A)-(R)(i)-(iv) separate penalties	Requirements for orientation and training of personnel providing direct care to clients receiving home dialysis services.
§97.405(f)(2)(A)-(G) separate penalties	Requirement for an orientation and skills education period for licensed nurses.
§97.405(i)	Requirement that an agency coordinate the exchange of medical and other important information when transferring a home dialysis client to a health-care facility for treatment.
§97.405(k)	Requirement for routine hepatitis testing of home dialysis clients and agency employees providing dialysis care.
§97.405(k)(1)(A)-(C) separate penalties	Requirements for hepatitis B screening and vaccinations for staff.
§97.405(k)(2)(A)-(E) separate penalties	Requirements for hepatitis B screening and vaccinations for clients.
§97.405(l)	Requirements for employees providing direct care to clients to have a current CPR certification.

SEVERITY LEVEL B VIOLATIONS \$500 - \$1,000 per violation	
Rule Cite	Subject Matter
§97.405(m)	Requirement for initial admission assessment of a client for home dialysis services.
§97.405(n)	Requirement for development of a long-term program for a client receiving home dialysis services.
§97.405(o)	Requirement that the agency conducts a history and physical of a home dialysis client at admission and annually.
§97.405(p)(1)-(2) separate penalties	Requirement for physician orders for home self-assisted dialysis treatment.
§97.405(q)(1)-(7) separate penalties	Requirements for development and implementation of a care plan for a home dialysis client.
§97.405(r)	Requirement for medication administration by licensed personnel for an agency that provides home dialysis services.
§97.405(t)(1)-(4) separate penalties	Requirements for use of water in the home dialysis setting.
§97.405(v)(1)(A)-(D) and (2) separate penalties	Requirement for a written preventive maintenance program for home dialysis equipment.
§97.405(w)(1)-(6) separate penalties	Reuse of disposable medical devices in the home dialysis setting.
§97.405 (x)(1)-(4) separate penalties	Provision of laboratory services.
§97.405(y)(1)-(2) separate penalties	Supplies for home dialysis services.
§97.405(z)(1)-(7)(A)-(C) separate penalties	Compliance with policies and procedures for emergencies addressing fire, natural disaster, and medical emergencies, required of an agency that provides home dialysis services.
§97.406(2)-(5) separate penalties	Provision of psychoactive services.
§97.407(1)-(11) separate penalties	Provision of intravenous therapy services.
§97.523(e)	Requirement to grant the surveyor access to the agency.
§97.701(a)-(g) separate penalties	Home health aides.
§95.128(a)-(n) and (q)-(r)	Home health medication aides.
§95.128(o)-(p)	Home health medication aide training program.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of Request for Proposals

Texas State Affordable Housing Corporation (TSAHC) is pleased to announce the issuance of its newest Request for Proposals (RFP) under its 2006 Private Activity Bond Program. All funds will go toward the reconstruction, rehabilitation, or replacement new construction of multifamily rental housing in certain areas affected by Hurricanes Katrina and Rita. This includes twenty-one (21) of the twenty-two (22) counties in the Southeast and Gulf Coast regions of Texas (excluding Harris county) that were most impacted by the hurricanes as declared by the Governor of the State of Texas on October 3, 2005. The Corporation will offer approximately \$26 million in private activity bonds along with a low interest, cash flow loan of up to five hundred thousand dollars (\$500,000).

For the purpose of this RFP, a qualified rehabilitation or reconstruction development must be located in one of the following counties: Angelina, Brazoria, Chambers, Fort Bend, Galveston, Hardin, Jasper, Jefferson, Liberty, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler, or Walker county. A qualified replacement new construction development must be located in either Jefferson or Orange counties.

The Corporation's Board of Directors ("Board") identified the Hurricane Disaster Affected areas of Texas to be specific areas of housing need at this time and approved the targeting of these areas in their February 10th board meeting. All proposals must demonstrate local community support for any potential affordable housing development. Proposals in response to this RFP will be due April 7, 2006. Any and all parties interested in responding to this RFP and applying for this funding opportunity should view or download copies of the RFP from the Corporation's website at www.tsahc.org. The RFP contains specific information on submission requirements and deadlines pertinent to the program. Any questions about the Requests for Proposals must be e-mailed or faxed to Cari Garcia at cgarcia@tsahc.org or (512) 477-3557. All questions and responses will be posted on TSAHC's web site.

Private activity bonds to finance qualified residential rental facilities are subject to the limitations imposed by federal and state regulations pertaining to private activity bond cap ("volume cap"). In the 78th Regular Session (2003), the Texas Legislature passed S.B. 284, which, among other purposes, awarded 10 percent (10%) of the State's multifamily volume cap to the Corporation. Although volume cap is limited, the Corporation encourages proposals from developers of new and existing multifamily properties and will use its best efforts to provide bond financing to as many qualified properties as reasonably feasible in target areas identified by the Corporation.

TRD-200600950

David Long

President

Texas State Affordable Housing Corporation

Filed: February 22, 2006

Department of Aging and Disability Services

Open Solicitation #2 for Lamb County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2324(c), secondary selection process, the Department of Aging and Disability Services (DADS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for **Lamb County, County #140**. Medicaid nursing facility occupancy rates in **Lamb County** exceeded the 90% occupancy threshold for six consecutive months during the period of **May 2005 through October 2005**. The county occupancy rates for each month of that period were: **90.9%, 91.0%, 91.4%, 92.4%, 92.4%, 90.6%**. In accordance with the requirements contained in 40 TAC §19.2324(c), DADS will allocate up to **90** Medicaid beds to an eligible applicant that desires to construct a new nursing facility or to construct an addition to an existing nursing facility. Applicants for additional Medicaid beds must demonstrate a history of quality care as specified in 40 TAC §19.2322(e). Applicants must submit a written reply as described in 40 TAC §19.2324(c)(4) to Joe D. Armstrong, Department of Aging and Disability Services, Licensing and Credentialing Section, Regulatory Services, Mail Code E-342, P. O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by DADS before the close of business April 3, 2006, the published ending date of the open solicitation period. If one or more applicants are eligible for additional Medicaid beds, DADS will allocate Medicaid beds in accordance with 40 TAC §19.2324(c)(5). If no application for the secondary selection process is received or if no applicant meets the requirements in §19.2324(c), no further solicitation will occur.

TRD-200600903

Phoebe Knauer

General Counsel

Department of Aging and Disability Services

Filed: February 21, 2006

Public Notice Announcing Pre-Application Orientation (PAO) for Enrollment of Medicaid Waiver Program Providers

The Department of Aging and Disability Services (DADS) will hold a Pre-Application Orientation (PAO) for persons seeking to participate as a program provider in the Home and Community-Based Services (HCS) Program.

The PAO will be held at 8:45 a.m., Monday, June 5, 2006, in Austin, Texas at the J. J. Pickle Center. Persons wanting to attend the PAO must request a registration form by mail or by fax. Faxed requests must be made to (512) 438-5522. Mailed requests must be addressed to: Department of Aging and Disability Services; Tera Jones, Contract Specialist, Community Services, Contracts; P.O. Box 149030 MC W-517; Austin, Texas 78714-9030.

Note: All written requests must include first and last name along with a complete mailing address and a phone number. All requests **must** be legible.

Upon an applicant's written request, DADS will provide the applicant with information regarding the provider application, enrollment process, and a registration form for the PAO. To attend the PAO, an applicant must submit a completed registration form to DADS in a timely manner. DADS considers a completed registration form submitted in a timely manner only under the following conditions:

- (1) If mailed via the U.S. Postal Service, the completed registration form bears a postmark date no later than May 8, 2006;
- (2) if sent via a common or contract carrier, a receipt by the carrier shows that it was placed in the hands of the carrier no later than May 8, 2006; or
- (3) if hand delivered, it is delivered directly to DADS, Community Services, Contracts Unit, 701 W. 51st Street, MC W-517, Austin, Texas, no later than May 8, 2006.

Persons requiring an interpreter for the deaf or hearing impaired or any other accommodation must contact Tera Jones at (512) 438-5428 or Michael J. Moore at (512) 438-2285, or by contacting the TTY phone line of the Texas Relay at 1-800-735-2988 at least 72 hours before the PAO. Tera Jones and Michael J. Moore may be contacted for any additional information concerning the PAO.

TRD-200600882
Phoebe Knauer
General Counsel
Department of Aging and Disability Services
Filed: February 17, 2006

Department of Assistive and Rehabilitative Services

Public Forum

Join the Department of Assistive and Rehabilitative Services (DARS or department) Commissioner, Terry Murphy for an event marking the department's second anniversary on Friday, March 3, 2006 from noon until 3:00 p.m. at the Criss Cole Rehabilitation Center auditorium. The event begins with an update on the state of DARS from Commissioner Murphy followed by a public forum. The department would like to hear from stakeholders regarding the following topics: The DARS Strategic Plan Topic Areas and Recommendations for 2008-2009 Legislative Appropriations Request.

It will be two years in March that a new department was formed focusing on people with disabilities and families of children with developmental delays. Since then, many exciting program enhancements have occurred due to the increased synergy among the four DARS divisions and our stakeholders. Your ideas and opinions continue to be an important part of the planning process as DARS continues to grow and improve programs and services. For this reason, we hope to see you on Friday, March 3.

For more information contact:

Jonas E. Schwartz, MS
Stakeholder Relations Liaison
Department of Assistive and Rehabilitative Services
4800 North Lamar Boulevard, Suite 200, MC: 1416
Austin, Texas 78756
(512) 377-0646
(512) 377-0682 Fax

jonas.schwartz@dars.state.tx.us

TRD-200600835
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Filed: February 16, 2006

Brazos Valley Council of Governments

Request for Applications FY 2007

Notification of Potential Applicants of Posted Requests for Applications

The Criminal Justice Division (CJD) of the Governor's Office has a variety of funding sources available for juvenile justice, criminal justice, crime prevention, and victim services grants. CJD and the Brazos Valley Council of Governments (BVCOG) are seeking applications for Fiscal Year 2005 local, regional, and statewide grant projects aimed at making Texas a safer place. CJD and BVCOG administer the following funds:

State Criminal Justice Planning Fund (421)

These funds provide nonprofit organizations and state and local applicants with funds for a wide range of prevention, diversion, information sharing, victims services, training, and other projects designed to reduce crime and improve the criminal and juvenile justice systems.

Juvenile Justice and Delinquency Prevention Fund (JJDP)

CJD awards these funds to nonprofit organizations and state and local applicants to provide training, prevention, intervention, education, and alternatives for Texas youths.

Safe and Drug-Free Schools and Communities Act (SDFSC)

CJD awards these funds to nonprofit organizations and state and local applicants to create neighborhoods free of drugs and weapons; to foster individual responsibility; to promote respect for the rights of others; and to promote school attendance, discipline, and learning.

Title V Delinquency Prevention Act Fund (Title V)

CJD makes these funds available for local projects to implement comprehensive plans developed by communities. The strategy is to reduce risk factors that contribute to delinquency and to strengthen protective factors that make children more resistant to such behavior.

*Violence Against Women Act Fund (VAWA) ***

CJD awards these funds to nonprofit organizations and state and local applicants to reduce and prevent violence against women. The focus of these projects is to train law enforcement agencies and prosecutors to more effectively identify and respond to violent crimes against women as well as to develop and strengthen victim service programs.

*Victims of Crime Act Fund (VOCA) ***

CJD awards these funds to nonprofit organizations and state and local applicants to provide assistance and services directly to victims of crime. The goal of these projects is to help speed the victim's recovery from a criminal act and aid them through the criminal justice process.

** BVCOG is not soliciting new FY 2007 applications for VOCA and VAWA projects due to funding limitations. Only regional VOCA and VAWA projects will be accepted for FY 2007. Continuation VOCA and VAWA projects will be funded as funds are made available.

Submission of Applications and Tentative CJD Deadlines

Applications for all funding sources should be submitted electronically to CJD directly by the submission deadline set by CJD and **will not be accepted past the submission deadline**. If assistance is needed, you may contact the BVCOG Public Safety Planning Manager, Linda McGuill or the Public Safety Planner, Josie Ely, for more information. Linda can be reached at (979) 595-2800, ext. 2040 or e-mail at lm-guill@bvcog.org. Josie can be reached at (979) 595-2800, ext. 2043 or e-mail at jely@bvcog.org or you can contact CJD at (512) 463-1919.

The following are the **tentative** CJD grant application submission deadlines:

Victims of Crime Act (VOCA) Fund Program, March 1, 2006;

Juvenile Accountability Block Grant (JABG) Local and Discretionary, March 18, 2006;

S.T.O.P. Violence Against Women Act (VAWA) Fund Program, April 3, 2006;

State Criminal Justice Planning (421) Fund, April 3, 2006;

Safe and Drug-Free Schools and Communities (SDFSC) Act Fund, April 3, 2006;

Juvenile Justice and Delinquency Prevention (JJDP) Act Fund, May 1, 2006;

Title V Delinquency Prevention Act Fund, May 1, 2006.

Complete Applications

An application must include the following information to be considered complete (this list may be modified if the application changes):

- * Grant application cover sheet
- * Budget form
- * Resolution
- * Match and Generated Performance Income (GPI) Forms (only when match is required)
- * Fund-specific criteria forms
- * Project narrative form
- * Supporting documents form
- * Cooperative working agreement
- * Non-profit financial capability questionnaire (for new non-profit corporation applicants only)
- * Any other required attachments

Community Planning

Projects must meet an identified need or resource within the regional community plan or the applicant must have participated in the community planning process to be eligible for funding. To receive a copy of the community plan or to get additional information, contact the CJ Planner at BVCOG.

Technical Assistance and Grant Application Workshop

During the application process, the BVCOG CJ Planner will, on request, assist applicants with questions or problems they may encounter. **It is recommended that all applicants attend a grant application workshop on February 22, 2006 from 1:00 - 4:00 p.m. at the Center for Regional Services, 3991 E. 29th St., Bryan, TX. The purpose of the grant workshop is to review new application forms and guidelines. If the applicant cannot attend, but wishes to apply, the applicant must contact Josie Ely at (979) 595-2800 or jely@bvcog.org for instruction.**

Application Review Process

New and continuation grants require the same review process. CJD grant applications are received and reviewed by CJD for eligibility. The eligible applications will then be sent to the COG for prioritization.

The CJ Planner mails copies of the applications to the CJAC members for their review. The CJAC then meets to hear presentations from applicants and score applications. All CJAC meetings are held in compliance with the Texas Open Meeting Act. The scores are tallied during the meeting. Applications are ranked, and the CJAC makes a formal funding recommendation to the BVCOG Board of Directors based on these scores.

A qualified representative must be present to make a presentation to the CJAC. If a representative is not present, the application will not be scored and will not be recommended for funding.

The BVCOG Board of Directors meets on the second Wednesday of each month. The Board of Directors reviews the CJAC's recommendations and makes a formal funding decision. This information is then forwarded to CJD in Austin. CJD then makes the final funding decision and notifies COG by e-mail. The COG CJ Planner will notify grant recipients within two business days after the COG receives notice, and CJD will then notify the recipient in writing.

Conflict of Interest and Ties

The CJ Planner is not a voting member of the CJAC. A CJAC member must abstain from voting or commenting on any application during the prioritization process if he or she is related to the applicant within the third degree by consanguinity (blood) or within the second degree by affinity (marriage); is employed by the applicant agency and works for the unit or division that would administer the grant; serves on any board that oversees the unit or division that would administer the grant; owns or controls any interest in a business entity or other non-governmental organization that benefits, directly or indirectly, from activities with the applicant; receives any funds from the applicant as a result of the grant; or uses or receives a substantial amount of tangible goods, services, or funds from the applicant.

The CJAC Chairperson will determine if a conflict of interest exists with a voting member of the committee. If a tie occurs between two or more scores, the committee members will take an ordinal vote without the chair participating in the vote. If the ordinal vote results in a tie, then the CJAC Chairperson will break the tie.

Decreasing Funding Ratio Policy

The following funds have a decreasing funding ratio over five years:

- * Criminal Justice Planning (421) Fund
- * Juvenile Justice and Delinquency Prevention Act Fund
- * Safe and Drug-Free Schools and Communities Act Fund

The decreasing funding ratio provides for CJD funding of 100% of costs the first year. The first year grant award sets a benchmark for the funding levels of any subsequent award:

- * In the second year, the grantee is eligible for 100% of the benchmark.
- * In the third year, the grantee is eligible for 75% of the benchmark.
- * In the fourth year, the grantee is eligible for 50% of the benchmark
- * In the fifth year, the grantee is eligible for 25% of the benchmark.

Exceptions to the Decreasing Funding Ratio and Maximum Years of Funding policies are BVCOG's regional coordination project, BVCOG's law enforcement training project, and BVCOG's regional juvenile justice alternatives project.

Requests for additional years of funding (beyond five years) will be treated as a new application and compete as such. Cities and counties receiving "421 Funds" must assume all costs of the grant in at least five years, according to Chapter 772 of the Government Code.

The minimum grant request is \$5,000. There is no maximum; however, requests are obviously limited to the amount of money allocated to the region in each of these funds. The CJAC or CJD may grant exceptions to the minimum grant request rule.

Appeal Process

CJD will not accept appeals; therefore, appeals can only be made at the COG level. Appeals must be based on a verifiable error made during the prioritization or review process, and the applicant must be able to show that the error actually caused the application to not be funded. The applicant should submit written documentation in support of the appeal within 10 days of receiving notification of the CJAC's funding recommendation or the BVCOG Board of Directors funding decision.

Notification of Funding Decisions

The BVCOG CJ Planner will notify applicants of funding recommendations made by the CJAC within the following 10 business days of the CJAC meeting. The CJ Planner will also inform applicants of funding decisions made by the BVCOG Board of Directors within the following 10 business days of the board meeting.

TRACS Review

The Texas Review and Comment System (TRACS) is a process each state and federal grant completes. The BVCOG Board of Directors provides a non-binding review of all state and federal grants that impact the Brazos Valley region. All CJD applications submitted to the BVCOG CJ Planner complete this review process. Applicants will be notified of the board's funding recommendation.

TRD-200600834

Tom Wilkinson

Executive Director

Brazos Valley Council of Governments

Filed: February 15, 2006



Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of February 10, 2006, through February 16, 2006. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on February 22, 2006. The public comment period for these projects will close at 5:00 p.m. on March 24, 2006.

FEDERAL AGENCY ACTIONS:

Applicant: Texas Department of Transportation, Beaumont District; **Location:** The project is located at the intersection of the Gulf

Intracoastal Waterway (GIWW) and the Port Arthur Canal, under the State Highway (SH) 87 Bridge over the GIWW, in Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Arthur South, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 406823; Northing: 3299636. **Project Description:** The applicant proposes to construct a bridge protection system consisting of two fender systems (north and south of the GIWW) and four dolphins (one east and west of SH 87 at both the north and south fenders). The proposed fender systems consist of 36 fender pilings that are each 16 inches in diameter. The proposed horizontal clearance between the fenders would be 210 feet. The vertical clearance at the GIWW would remain 73 feet above mean-high-tide since improvements to the existing bridge are not proposed. The proposed dolphins are approximately 45 feet in diameter. Fill material consisting of sand would be deposited within the dolphin by first driving cylindrical sheet piles into the ground and subsequently removing the water and earthen material from within the perimeter of the piles. The sand would then be deposited within the piles of the dolphins. Approximately 0.15 acre of the GIWW is proposed to be filled for the purpose of constructing the dolphins. The existing bridge protection system would be removed. CCC Project No.: 06-0169-F1; Type of Application: U.S.A.C.E. permit application #24068 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P. O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200600930

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: February 22, 2006



Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 54, Subchapters F and G, Texas Education Code, the Comptroller of Public Accounts (Comptroller), as chairman and executive director of the Texas Prepaid Higher Education Tuition Board (Board), and on behalf of the Board, announces its issuance of a Request for Proposals (RFP #175L) for the purpose of obtaining professional accounting services in the form of a financial audit of the Board's prepaid tuition program and college savings plan, qualified tuition programs under Internal Revenue Code Section 529. The successful respondent, if any, will be expected to begin performance of the contract on or about October 1, 2006.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel for Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on March 3, 2006, after 10:00 a.m., Central

Zone Time (CZT), and during normal business hours thereafter. The Comptroller also made the RFP available electronically on the Texas Marketplace after March 3, 2006, 10:00 a.m. (CZT). The address of the Texas Marketplace is (<http://esbd.tbpc.state.tx.us>).

Non-Mandatory Letters of Intent and Questions: Letters of Intent are non-mandatory. All written inquiries, questions and non-mandatory Letters of Intent must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Monday, March 20, 2006. Prospective proposers are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. Letters of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must be signed by an authorized representative of that entity. All responses to questions will be posted electronically on Friday, March 24, 2006, on the Texas Marketplace at: <http://esbd.tbpc.state.tx.us>. Non-Mandatory Letters of Intent and Questions received after the deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be received in the Assistant General Counsel for Contracts' Office at the location specified above (ROOM G-24) no later than 2:00 p.m. (CZT), on Friday, April 7, 2006. Proposals received in ROOM G24 after this time and date will not be considered; respondents shall be solely responsible for verifying timely receipt of proposals and all required copies in the Issuing Office by the deadline.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The Board will make the final decision.

The Comptroller and the Board each reserve the right to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - Friday, March 3, 2006, 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - Monday, March 20, 2006, 2:00 p.m. CZT; Official Responses to Questions posted - Friday, March 24, 2006, Proposals Due - Friday, April 7, 2006, 2:00 p.m. CZT; Contract Execution - July 1, 2006, or as soon thereafter as practical; Commencement of Contract Activities - October 1, 2006.

TRD-200600942

Pamela Smith

Deputy General Counsel, Contracts

Comptroller of Public Accounts

Filed: February 22, 2006

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/27/06 - 03/05/06 is 18% for Consumer¹/Agricultural/Commercial² credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/27/06 - 03/05/06 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 03/01/06 - 03/31/06 is 7.50% for Consumer/Agricultural/Commercial credit thru \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 03/01/06 - 03/31/06 is 7.50% for Commercial over \$250,000.

¹Credit for personal, family, or household use.

²Credit for business, commercial, investment, or other similar purpose.

TRD-200600920

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: February 21, 2006

Court of Criminal Appeals

Major Consulting Contract Awarded

The Court of Criminal Appeals has awarded a major consulting contract to MGT Management Consultants, LLC, 1111 Third Avenue, Suite 2700, Seattle, Washington 98101-3201 in the amount of \$50,000. The contract commenced on February 3, 2006, and will terminate on May 31, 2006.

MGT Management Consultants will:

(1) determine if the grantee organizations are staffed appropriately and staff are adequately paid;

(2) evaluate the organization's activities as to how they benefit the grant program; and

(3) evaluate the efficiency and effectiveness of each organization's grant program.

All findings and reports are due to the agency by May 31, 2006.

TRD-200600924

Louise Pearson

Clerk

Court of Criminal Appeals

Filed: February 21, 2006

Texas Education Agency

Request for Early Reading Diagnostic Instruments

Description. The Texas Education Agency (TEA) is notifying publishers of a second opportunity to submit early reading diagnostic instruments for Kindergarten, Grade 1, and Grade 2 for review. The original notice was published in the *Texas Register* on December 30, 2005 (30 TexReg 9035). Publishers who submitted instruments under the December 2005 notice do not need to resubmit materials. Texas Education Code (TEC), §28.006, authorizes the commissioner of education to develop recommendations for school districts to administer early reading instruments to diagnose student reading skill and comprehension development.

Under TEC, §28.006(b), the commissioner of education shall adopt a list of early reading instruments that school districts may use to diagnose reading skill and comprehension development. Reading instruments placed on the list must be based on scientific research, evaluate individual student reading progress, and be used to determine students at risk for dyslexia or other reading difficulties. The list of reading instruments adopted under TEC, §28.006(b), must also provide for diagnosing the reading development and comprehension of students partic-

ipating in a program under TEC, Chapter 29, Subchapter B (Bilingual Education and Special Language Programs).

Program Requirements. Since the 1998-1999 school year, school districts have been required to administer early reading instruments. Results from the early reading instruments are used to inform instruction and place students at risk for reading difficulties, including dyslexia, in Accelerated Reading Instruction intervention programs. Results from these early reading instruments must be reported to the commissioner of education, the local school board, and the parent and/or guardian of students tested. The list of early reading instruments will be made available so that school districts and charter schools may order instruments for the 2006-2007 school year. The 2006-2007 list of instruments adopted by the commissioner in the spring of 2006 will remain in effect through the 2006-2007 and the 2007-2008 school years. Once an instrument is selected for the commissioner's list, it will remain on the list for two years unless the approved test is no longer available from the publisher or the publisher decides to submit an updated version of the instrument. Under these circumstances, the instrument must be resubmitted for review.

Publishers of early reading instruments that were selected prior to the 2005-2006 *Commissioner's List of Early Reading Instruments* need to resubmit tests.

Due to continued budgetary limitations, a \$5 per student per year cost cap remains on each complete Test Option on the 2006-2007 *Commissioner's List of Early Reading Instruments*. For example, if Option G requires two instruments in order to assess all required domains at a grade level, then the combination of those two instruments will be state funded at no more than \$5 per student. For the 2006-2007 school year, school districts and open-enrollment charter schools will purchase early reading instruments directly from the publisher/vendor unless the test is published by the TEA. If the cost of the Test Option exceeds the \$5 per student limit established, the state will reimburse the school district or open-enrollment charter school at the limit established. The school district or open-enrollment charter school is responsible for the remainder of the cost of the Test Option.

Selection Criteria. Publishers will be responsible for submitting tests that they wish to be reviewed for consideration for inclusion on the 2006-2007 *Commissioner's List of Early Reading Instruments*. All tests submitted for review must be based on scientific research and must submit evidence of reliability and validity for assessing key reading domains and for identifying children at risk of reading failure, including the identification of children with dyslexia. Submitted evidence must demonstrate that the test meets the state criteria for reliability and validity. Instruments will be evaluated in terms of validity, reliability, cost-effectiveness, and ease of administration/implementation by the classroom teacher. Consideration will also be given to the number of domains covered by the test and the number of additional tests that would need to be purchased by schools in order to cover all required domains. Reading instruments (English and Spanish) submitted for review must address at least one of the following five domains: (1) phonological awareness; (2) graphophonemic knowledge; (3) word reading; (4) oral reading accuracy; and (5) comprehension of text, as appropriate for Kindergarten, Grade 1, and Grade 2. Tests submitted for use by Reading First schools may also assess vocabulary and fluency. As in previous years, it may be necessary to use a combination of instruments to form a Test Option to assess all required domains. The criteria used to select instruments for the 2006-2007 school year is available through the Division of Curriculum - Statewide Initiatives on the TEA website at <http://www.tea.state.tx.us/reading/>.

Materials must be submitted to the attention of Dr. David Francis; Texas Institute for Measurement, Evaluation, and Statistics; University of Houston; 100 TLCC Annex; Houston, Texas 77204-6022 by

5:00 p.m. (Central Time), Monday, March 27, 2006, to be considered for inclusion on the 2006-2007 *Commissioner's List of Early Reading Instruments*. A detailed list of the contents of each box submitted must be included on or attached to the packing slip.

TRD-200600933

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: February 22, 2006



Request for Grade 3 Early Reading Diagnostic Instruments for List of Grade 3 Early Reading Instruments for the 2006-2007 and 2007-2008 School Years

Description. The Texas Education Agency (TEA) is notifying publishers of a second opportunity to submit for review early reading diagnostic instruments for the *List of Grade 3 Early Reading Instruments*. The original notice was published in the *Texas Register* on December 30, 2005 (30 TexReg 9036). Publishers who submitted instruments under the December 2005 notice do not need to resubmit materials. P.L. 107-110, Title I, Part B, Subpart 1 of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001, CFDA #84.357, authorizes the commissioner of education to develop recommendations for school districts to administer early reading instruments to diagnose student reading skill and comprehension development.

Under P.L. 107-110, Title I, Part B, Subpart 1 of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001, CFDA #84.357, the TEA shall adopt a list of Grade 3 early reading instruments that districts and charters may use to diagnose reading skill and comprehension development. Reading instruments placed on the list must be based on scientific research, evaluate individual student reading progress, and be used to determine students at risk for dyslexia or other reading difficulties. The list of reading instruments must also provide for diagnosing the reading development and comprehension of students participating in a program under Texas Education Code, Chapter 29, Subchapter B (Bilingual Education and Special Language Programs).

Program Requirements. Since May 2003, some school districts and charter schools have been required to administer Grade 3 early reading instruments. Results from the early reading instruments are used to inform instruction and place students at risk for reading difficulties, including dyslexia, in Accelerated Reading Instruction intervention programs. The list of early reading instruments will be made available so that school districts and charter schools may order instruments for the 2006-2007 and 2007-2008 school years. Once an instrument is selected for the 2006-2007 and 2007-2008 *List of Grade 3 Early Reading Instruments*, it will remain on the list for two years unless the approved test is no longer available from the publisher or the publisher decides to submit an updated version of the instrument. Under these circumstances, the instrument must be resubmitted for review.

Publishers of early reading instruments that were selected prior to the 2005-2006 *Commissioner's List of Early Reading Instruments* need to resubmit tests.

Selection Criteria. Publishers will be responsible for submitting tests that they wish to be reviewed for consideration for inclusion on the 2006-2007 and 2007-2008 *List of Grade 3 Early Reading Instruments*. All tests submitted for review must be based on scientific research and must meet the state criteria for reliability and validity.

Instruments will be evaluated in terms of validity, reliability, cost-effectiveness, and ease of administration/implementation by the classroom teacher. Reading instruments (English and Spanish) submitted for review must address at least one of the following five domains: (1) phonological awareness; (2) graphophonemic knowledge; (3) word reading; (4) oral reading accuracy; and (5) comprehension of text, as appropriate for Grade 3.

Materials must be submitted to the attention of Dr. David Francis; Texas Institute for Measurement, Evaluation, and Statistics; University of Houston; 100 TLCC Annex; Houston, Texas 77204-6022 by 5:00 p.m. (Central Time), Monday, March 27, 2006, to be considered for inclusion on the *List of Grade 3 Early Reading Instruments*. A detailed list of the contents of each box submitted must be included on or attached to the packing slip.

TRD-200600934

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: February 22, 2006



Request for Personal Financial Literacy Materials - High School Level for the 2006-2007 School Year

Description. The Texas Education Agency (TEA) is notifying organizations that personal financial literacy materials for use in high school economics courses may be submitted for review. Approved materials will be added to the *List of Approved Personal Financial Literacy Materials* for use by schools beginning with the 2006-2007 school year. Texas Education Code (TEC), §28.002, authorizes the State Board of Education to approve materials for use in courses meeting a requirement for an economics credit under TEC, §28.025.

Program Requirements. Materials submitted for review may include any of the following areas of instruction: understanding interest; avoiding and eliminating credit card debt; understanding the rights and responsibilities of renting or buying a home; managing money to make the transition from renting a home to home ownership; starting a small business; being a prudent investor in the stock market and using other investment options; beginning a savings program and planning for retirement; bankruptcy; the types of bank accounts available to consumers and the benefits of maintaining a bank account; balancing a checkbook; the types of loans available to consumers and becoming a low-risk borrower; understanding insurance; and/or charitable giving.

Selection Criteria. Organizations will be responsible for submitting materials that they wish to be reviewed for consideration for inclusion on the *List of Approved Personal Financial Literacy Materials*. All materials submitted for review must satisfy at least one of the areas of instruction in the preceding list and must be submitted with a verification of the extent to which the areas are covered in the materials. The verification form may be downloaded from the TEA website at <http://www.tea.state.tx.us/curriculum/social/verify.doc>.

Materials must be submitted to Michelle Ungurait, Director, Social Studies, Texas Education Agency, Room 3-121, 1701 North Congress Avenue, Austin, Texas 78701 by 5:00 p.m. (Central Time), Monday, April 10, 2006, to be considered for inclusion on the *List of Approved Personal Financial Literacy Materials*.

TRD-200600935

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: February 22, 2006



Request for Proficiency Tests for the Assessment of Limited English Proficient Students

Description. In order to provide school districts with sufficient assessment options for identification, placement, and exit of limited English proficient students, the Texas Education Agency (TEA) is notifying assessment publishers of a second opportunity to submit proficiency assessments and/or achievement tests for review for the *List of State Approved Tests for the Assessment of Limited English Proficient Students*. The original notice was published in the *Texas Register* on January 6, 2006 (31 TexReg 193).

Texas Education Code (TEC), §29.056(a)(2), authorizes TEA to compile a list of approved assessments for the purposes of identifying students as limited English proficient for entry into or exit from bilingual education and/or special language programs; annually assessing oral language proficiency in English and Spanish; and measuring reading and writing proficiency in English and Spanish for program placement. The state-approved tests placed on the list must be based on scientific research and must measure oral language proficiency in listening and speaking in English and Spanish from Prekindergarten (PK) to Grade 12. Assessments must also measure reading and writing in English and Spanish from PK to Grade 12. Reading and writing assessments indicate placement in the bilingual/English as a Second Language (ESL) program and are not for entry purposes.

Norm-referenced standardized achievement tests in English will be used for identification, entry into and exit from programs, and may be used for formative assessments.

Norm-referenced standardized achievement tests in Spanish may be used for placement purposes only. All tests to be included on the *List of State Approved Tests for the Assessment of Limited English Proficient Students* must be re-normed every six years to meet the criteria specified in TEC, §39.032, which requires that standardization norms not be more than six years old at the time the test is administered. The 2006-2007 *List of State Approved Tests for the Assessment of Limited English Proficient Students* will be in effect only for the 2006-2007 school year. Assessments must be resubmitted annually to undergo the review process even if they have been approved in prior years.

The Assessment Committee, comprised of educators from throughout the state and TEA staff, will review and approve the 2006-2007 *List of State Approved Tests for Assessment of Limited English Proficient Students*. The Assessment Committee may choose to change the criteria and/or effective dates at a future time.

Selection Criteria. Assessment publishers will be responsible for submitting tests that they wish to be reviewed for consideration for inclusion on the 2006-2007 *List of State Approved Tests for Assessment of Limited English Proficient Students*. All tests submitted for review must be based on scientific research and must measure oral language proficiency in listening and speaking in English and Spanish from PK to Grade 12. Assessments must measure reading and writing in English and Spanish from PK to Grade 12 and must meet the state criteria for reliability and validity. Therefore, technical manuals must also be submitted. Assessments must also measure specific proficiency levels in oral language, reading, and writing in both English and Spanish. Assessment instruments (English and Spanish) submitted for review will be grouped in the following categories: (1) Oral Language Proficiency Tests in English in Listening and Speaking domains; (2) Oral Language Proficiency Tests in Spanish in Listening and Speaking domains; (3) Reading and Writing Proficiency in English; (4) Reading and Writing Proficiency in Spanish; and (5) Ability Tests/Gifted and Talented. Publishers are not required to submit proposals for all categories.

Proposals must be submitted and presented on May 1, 2006, to be considered for inclusion on the *List of State Approved Tests for the Assessment of Limited English Proficient Students*. Assessment publishers will be required to attend the review of the assessments on May 1, 2006, which will be held at the William B. Travis Building, Room 1-111, 1701 North Congress Avenue, Austin, Texas. At the review, publishers must present complete official copies of sample tests in English and Spanish with comprehensive explanations that include scoring information; norming data consisting of ethnicity, gender, grade level, and geographic region; and technical manuals with validity and reliability information. Only materials presented on May 1, 2006, will be considered for approval. Any materials and/or revisions submitted after the deadline cannot be reviewed until the following year.

Further Information. For clarifying information, contact Georgina Gonzalez, Director of Bilingual/ESL, or Susie Coultriss, Assistant Director of Bilingual/ESL, Texas Education Agency, (512) 475-3555.

TRD-200600932

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: February 22, 2006

Employees Retirement System of Texas

Request for Proposal for Actuarial and Consultative Services

The Employees Retirement System of Texas (ERS or System) is soliciting responses from qualified firms to provide actuarial and consulting services. ERS provides a retirement and disability pension plan for state employees, law enforcement and custodial officers, elected state officials and two classes of judges. The System administers the trust funds with a fiduciary obligation to the members and retirees of the System who are its beneficiaries. Programs requiring actuarial services are the Employees Retirement System of Texas Plan (ERS), Judicial Retirement System of Texas Plan One (JRS I), Judicial Retirement System of Texas Plan Two (JRS II), and the Law Enforcement and Custodial Officer Supplemental Retirement Program (LECOS).

Firms wishing to respond to the Request for Proposal (RFP) must be professional actuarial services firms that provide actuarial valuation, experience investigations, and pension consulting services. The firm must have been in existence as a business entity performing such services for a minimum of five (5) years. The firm must have all necessary permits, licenses, and professional credentials. Appropriate levels and types of applicable liability insurance must be in full force at the time the response is submitted and throughout the term of the contract. The principal actuary performing the review must be a Fellow of the Society of Actuaries. The principal actuary performing the review must have a minimum of ten (10) years of experience as an actuary providing pension consulting services, experience analysis, and valuation assignments for public retirement systems. Any supporting actuary shall have five (5) years of experience as an actuary providing pension consulting services, experience analysis, and valuation assignments for public retirement systems. The firm must provide its own work facilities, equipment, supplies, and support staff to perform the required services.

ERS will base its evaluation and selection of the firm for the review on the factors and criteria outlined in this notice and in the RFP, including, but not limited to the following, which are not necessarily listed in order of priority: compliance with the RFP; qualifications of the proposed actuarial staff; technical experience, including experience with providing actuarial services to other comparable pension plans; the quality of the response, including the demonstration of a clear understanding of the scope of work as well as the appropriateness and adequacy of

proposed procedures; the cost of the services; execution of a contract satisfactory to ERS; and other factors deemed appropriate by ERS.

ERS reserves the right to reject any response submitted which does not meet the criteria specified in this notice and in the RFP. ERS is under no legal requirement to execute a contract on the basis of this notice. ERS will not pay any costs incurred by any firm in responding to this notice or RFP or in connection with the preparation thereof.

A copy of the complete RFP can be obtained from ERS after March 1, 2006. To request a copy of the RFP or for additional information, please fax Ann Waterman at ERS at (512) 867-7491, or e-mail her at ann.waterman@ers.state.tx.us. The deadline for receipt of responses by ERS is 4:00 p.m. CST on March 31, 2006.

TRD-200600931

Paula A. Jones

General Counsel

Employees Retirement System of Texas

Filed: February 22, 2006

Texas Commission on Environmental Quality

Notice of Deletion of Texas American Oil State Superfund Site from the State Superfund Registry

The executive director (ED) of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this notice of deletion of the Texas American Oil State Superfund Site (the Site) from the state registry, the list of state Superfund sites. The state registry lists the contaminated sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

The Site was originally proposed for listing on the state registry in the January 22, 1988, edition of the *Texas Register* (13 TexReg 427). The Site, including all land, structures, appurtenances, and other improvements, is approximately eight acres located in Midlothian, Ellis County, Texas. The Site is located in an abandoned limestone quarry, approximately three miles north of Midlothian on the west side of Old State Highway 67 in northwest Ellis County, near the Dallas County line. In addition, the Site includes any areas where hazardous substances came to be located as a result, either directly or indirectly, of releases of hazardous substances from the Site.

The eight-acre Site was the location of a waste oil recycler, which re-refined used crankcase and transmission oil from 1970 to 1978. When the facility closed in 1978, the wastes were pumped from the three pits near the west end of the facility; the remaining sludge was mixed in place with soil; and the pits were covered with a three-inch layer of asphalt to comply with a Texas Department of Water Resources order. In 1980, the property was leased by a transporter of used oil. Records indicate that operations were shut down that same year, but most of the structures, tanks, and stored waste remained on site until at least 1984, when the United States Environmental Protection Agency made an inspection and recommended that Texas American Oil remove all liquids from a sump pit and a 135,000-gallon storage tank and restrict access to those areas. An April 1987 site inspection showed that all tanks and equipment had been removed; however, soil samples from the areas of the structures showed elevated lead concentrations. At the time of the hazard ranking system scoring, the contaminants of concern included chloroform, lead, and polychlorinated biphenyl.

The remedial actions, conducted from 2002 to 2004, consisted of treatment and/or removal of contaminated soils, sludge, asphalt, liquid, and waste from the Site, and disposal of this material at an appropriately

licensed and permitted off-site disposal facility. The remedial action also included plugging and abandonment of monitoring wells on the Site, placement of off-site select fill, and topsoil material and revegetation of all disturbed areas of the Site.

The Site is appropriate for residential use according to Texas Risk Reduction Standards, 30 TAC Chapter 335, Subchapter S. The property owner has been notified that the Site is enclosed by a fence and the gate is locked.

In accordance with 30 TAC §335.344(b), the commission held a public meeting on January 19, 2006, in council chambers of Midlothian City Hall, to receive comments on the intended deletion of the Site from the state registry. No comments regarding the proposed deletion were received at the public meeting. The complete public file, including a transcript of the public meeting, may be viewed during regular business hours at the commission's Records Management Center, Records Customer Service, Building E, First Floor, 12100 Park 35 Circle, MC 199, Austin, Texas 78753, telephone numbers (800) 633-9363 or (512) 239-2920. Fees are charged for photocopying file information.

Pursuant to 30 TAC §335.344(c), the ED has determined that, due to the remedial actions that have been performed, the Site no longer presents an imminent and substantial endangerment to public health and safety or the environment.

In accordance with Texas Health and Safety Code, §361.188(d), a notice will be filed in the real property records of Ellis County, Texas stating that the Site has been deleted from the state registry.

All inquiries regarding the deletion of the Site should be directed to Bruce McAnally, Community Relations, telephone number (800) 633-9363, extension 2141.

TRD-200600894

Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: February 21, 2006



Notice of District Petition

Notices mailed February 17 through February 22, 2006:

TCEQ Internal Control No. 01272006-D06; Saltgrass 300, Ltd. (Petitioner) filed a petition for creation of Galveston County Municipal Utility District No. 68 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 229.34 acres of land located in Galveston County, Texas; and (4) the proposed District is within the corporate boundaries of the City of La Marque, Texas. By Ordinance No. 952, effective November 25, 2005, the City of La Marque, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for municipal, domestic, industrial and commercial purposes; (2) acquire, construct, operate and maintain a system to gather, conduct, divert, and control local storm water or other local harmful excesses of water within the District; and (3) purchase, acquire, construct, own, lease, extend, improve, operate, maintain, and repair such additional improvements, facilities, plants, equipment, and appliances consistent

with the purposes for which the District is organized, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$10,300,000.

TCEQ Internal Control No. 07282005-D01; Becker Road LP (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 434 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lienholders, on the property to be included in the proposed District; (3) the proposed District will contain approximately 523.997 acres located in Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2005-290, effective March 30, 2005, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for municipal, domestic, industrial and commercial purposes; (2) acquire, construct, operate and maintain a system to gather, conduct, divert, and control local storm water or other local harmful excesses of water within the District; (3) purchase, acquire, construct, own, lease, extend, improve, operate, maintain, and repair such additional improvements, facilities, plants, equipment, and appliances consistent with the purposes for which the District is organized, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately \$79,500,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional informa-

tion, individual members of the general public may contact the Districts Review Team at 1-512-239-4691. Si desea información en Español, puede llamar al 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200600938

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 22, 2006



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 3, 2006**. The commission will consider any written comments received; and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P. O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 3, 2006**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Abdul Kanzani dba Super Maks Grocery; DOCKET NUMBER: 2004-0452-PST-E; TCEQ ID NUMBERS: 011207 and RN101742963; LOCATION: 3370 Concord Road, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(1), and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain a copy of the California Air Resources Board (CARB) Executive Order(s) for the Stage II Vapor Recovery System and any related components installed at the facility; 30 TAC §334.8(c)(5)(C), by failing to permanently tag, label, or mark the underground storage tank (UST) system with an identification number listed on the UST registration and self-certification form; 30 TAC §334.10(b), by failing to have UST operational records available for inspection or to provide the records upon request by authorized agency personnel; 30 TAC §334.50(b)(1)(A), and TWC, §26.3475(c)(1), by failing to monitor for releases at a frequency of at least once every month not to exceed

35 days between each monitoring; and 30 TAC §334.50(d)(1)(B)(ii), and TWC, §26.3475(c)(1), by failing to reconcile the inventory control records on a monthly basis which were sufficiently accurate to detect a release as small as the sum of 1% of the total substance flow-through for the month plus 130 gallons; PENALTY: \$13,950; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: Birdsong Fuels & Services, L.L.C.; DOCKET NUMBER: 2005-1524-PST-E; TCEQ ID NUMBERS: 49027 and RN101813616; LOCATION: 860 Interstate Highway 10 South, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and 30 TAC §334.22(a), and TWC, §5.702, by failing to pay outstanding UST fees; PENALTY: \$2,800; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: F.K. Corporation dba Mr. JR's Grocery; DOCKET NUMBER: 2005-0824-PST-E; TCEQ ID NUMBERS: 25383 and RN103134680; LOCATION: 4627 North Highway 146, Baytown, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; and 30 TAC §334.22(a), and TWC, §5.702, by failing to pay UST fees for TCEQ Account Number 004675U for the Fiscal Year 2005, and associated late fees; PENALTY: \$4,200; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Garry Hardin; DOCKET NUMBER: 2005-1386-LII-E; TCEQ ID NUMBER: RN103428488; LOCATION: 3316 Muleshoe Lane, Fort Worth and 6501 Cassia Way, Arlington, Tarrant County, Texas; TYPE OF FACILITY: landscape irrigation; RULES VIOLATED: 30 TAC §344.4(a) and §30.5(a) and (b), TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system; PENALTY: \$750; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Mike Strozdas dba Best Landscape & Sprinkler; DOCKET NUMBER: 2003-0578-LII-E; TCEQ ID NUMBER: RN103492039; LOCATION: 6110 Rolling Forest, San Antonio, Bexar County, Texas; TYPE OF FACILITY: landscape irrigation; RULES VIOLATED: 30 TAC §30.5(b) and §344.4(a), and TWC, §34.007(a), by failing to obtain the required license from the commission prior to the sale and installation of a landscape irrigation system at a residence; PENALTY: \$1,463; STAFF ATTORNEY: Shana Horton, Litigation Division, MC 175, (512) 239-1088; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Robbie Mosley; DOCKET NUMBER: 2005-0848-PST-E; TCEQ ID NUMBERS: 15644 and RN101830685; LOCATION: Northwest corner of United States Highways 70 and 385,

Springlake, Lamb County, Texas; TYPE OF FACILITY: out-of-service gasoline station; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.50(a)(1)(A), and TWC, §26.3475(a) and (c)(1), by failing to provide a method of release detection which was capable of detecting a release from any portion of the UST system which contained regulated substances; 30 TAC §334.7(d)(3), and TWC, §26.346, by failing to amend, update, or change UST registration information; and 30 TAC §334.49(a), and TWC, §26.3475(d), by failing to protect the system from corrosion so as to ensure that releases due to corrosion were prevented; PENALTY: \$7,200; STAFF ATTORNEY: Rebecca Davis, Litigation Division, MC 175, (512) 239-5487; REGIONAL OFFICE: Lubbock Regional Office, 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(7) COMPANY: Tor Tenax, Inc. dba Amigos 2; DOCKET NUMBER: 2005-0314-PST-E; TCEQ ID NUMBER: RN102345741; LOCATION: 2001 Fredericksburg Road, San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(5)(C), by failing to permanently affix a label or tag to each UST fill tube with an identification number that corresponds to the UST identification number listed on the Self-Certification and Registration Form filed with the commission on all three USTs; 30 TAC §334.45(c)(3)(A), by failing to have all emergency shut off valves securely anchored at the base of each aboveground dispensing unit for all three USTs; 30 TAC §334.50(a)(1)(A), (b)(1)(A), (2), and (i)(III), and TWC, §26.3475(a) and (c)(1), by failing to provide a method of release detection on the UST system for all tanks and piping, including failing to test the line leak detection system on an annual basis; 30 TAC §334.49(c)(4)(C), and TWC, §26.3475(d), by failing to inspect and test the corrosion protection system within three to six months after installation and at least once every three years thereafter and could not demonstrate that the corrosion protection system had ever been properly tested; and 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$10,500; STAFF ATTORNEY: Amie Richardson, Litigation Division, MC 175, (512) 239-2999; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: Vernco Construction, Inc.; DOCKET NUMBER: 2005-0882-EAQ-E; TCEQ ID NUMBER: RN104537261; LOCATION: 18833 Redland Road, San Antonio, Bexar County, Texas; TYPE OF FACILITY: concrete contractor site; RULES VIOLATED: 30 TAC §213.4(a)(1), by failing to file and obtain the executive director's approval of an Edwards Aquifer protection plan prior to commencing the construction of a regulated activity on approximately one acre located on the Edwards Aquifer Recharge Zone; PENALTY: \$37,500; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-200600922

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Filed: February 21, 2006

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 3, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P. O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 3, 2006**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: AGA Enterprises, Inc.; DOCKET NUMBER: 2003-1188-PST-E; TCEQ ID NUMBERS: 54159 and RN102041571; LOCATION: 7120 IH-10, Orange, Orange County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to amend, update, or change registration information; 30 TAC §334.50(b)(1)(A), (b)(2)(A), and (i)(III), and TWC, §26.3475(c), by failing to monitor the underground storage tank (UST) system for releases at least once per month, conduct the annual performance and operation reliability test on the line leak detector, and monitor the UST piping for possible releases; 30 TAC §115.245(2), and Texas Health and Safety Code (THSC), §382.085(b), by failing to successfully complete the annual pressure decay test for the Stage II vapor recovery equipment installed at the station; 30 TAC §115.246(4) and (5), and THSC, §382.085(b), by failing to maintain Stage II training records at the station; 30 TAC §334.8(c)(5)(A)(iii), by failing to ensure a valid delivery certificate is posted at the station and is visible at all times; 30 TAC §§115.222(3), 115.242(4), and 334.72(2), and THSC, §382.085(b), by failing to detect a gasoline leak in the plus line underneath the dispenser on pump number three; 30 TAC §115.244(3), and THSC, §382.085(b), by failing to conduct monthly inspections of the Stage II vapor recovery system; 30 TAC §115.242(3)(J), and THSC, §382.085(b), by failing to repair inoperative Stage I dry break on the unleaded tank; and 30 TAC §334.50(d)(1)(B)(ii), by failing to reconcile inventory control records at least once each month sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flowthrough for the month plus 130 gallons; PENALTY: \$13,000; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: Carl W. Wright dba Rayburn Tackle; DOCKET NUMBER: 2005-0490-PST-E; TCEQ ID NUMBERS: 26827 and RN101869360; LOCATION: Rural Route 1, Box 754, Brookeland, Sabine County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(2)(C) and (4), and TWC, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days and by failing to test the system at least once every three years for proper operability; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a TCEQ delivery certificate by timely and proper submission of a new UST and Self-Certification form to the agency; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before the delivery of a regulated substance into a UST system; PENALTY: \$3,375; STAFF ATTORNEY: Amie Richardson, Litigation Division, MC 175, (512) 239-2999; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: City of Yorktown; DOCKET NUMBER: 2003-0115-MWD-E; TCEQ ID NUMBERS: 10323-001 and RN103025805; LOCATION: approximately 0.7 miles southeast of the intersection of State Highway 72 and State Highway 119 at the end of Ekhardt Street, Yorktown, De Witt County, Texas; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a), and Texas Pollutant Discharge Elimination System (TPDES), Permit Number 10323-001, Effluent Limitations and Monitoring Requirement Numbers 1 and 6 (the Permit), by failing to comply with permitted discharge limitations for Outfall 001; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(4) COMPANY: Cowtown Enterprises, Inc. dba Cowtown RV Park; DOCKET NUMBER: 2005-1088-PWS-E; TCEQ ID NUMBERS: 1840123 and RN101222792; LOCATION: Aledo, Parker County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and (g)(4), and THSC, §341.033(d), by failing to submit routine bacteriological samples and by failing to provide public notice; PENALTY: \$1,875; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Orange Crush Recyclers Management, L.L.C.; DOCKET NUMBER: 2004-0196-AIR-E; TCEQ ID NUMBER: RN103081394; LOCATION: 10801 Spangler Road, Dallas, Dallas County, Texas; TYPE OF FACILITY: rock crushing plant; RULES VIOLATED: 30 TAC §116.110(a)(1), and THSC, §382.085(b) and §382.085(a), by failing to obtain a permit or satisfy the conditions of a permit by rule to construct and operate a rock crusher; PENALTY: \$80,000; STAFF ATTORNEY: Amie Richardson, Litigation Division, MC 175, (512) 239-2999; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Pearl's L.L.C. dba Angels Gas & Grocery; DOCKET NUMBER: 2004-1510-PST-E; TCEQ ID NUMBERS: 62344 and RN102345139; LOCATION: 2906 North Main Street, Baytown, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(B), and TWC, §26.346(a), by failing to submit a petroleum storage tank (PST), self-certification form; 30 TAC §334.8(c)(5)(A)(iii), and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before deliveries of a regulated

substance into the USTs were accepted on December 23 and 28, 2003, January 2, 2004, February 19, 23, and 28, 2004, and March 8, 2004; 30 TAC §334.10(b), by failing to develop and maintain all UST records for review; and 30 TAC §115.245(1)(A), and THSC, §382.085(b), by failing to successfully meet the performance criteria proper to the Stage II vapor recovery system by successfully completing the following testing requirements using the test procedures found in the Vapor Recovery Test Procedures Handbook (RG-399, November 2002); PENALTY: \$4,200; STAFF ATTORNEY: Shannon Strong, Litigation Division, MC 175, (512) 239-0972; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: R & B Scobee's Mini Mart #3, Inc. dba R & B Scobee's Mini Mart 3; DOCKET NUMBER: 2004-1160-PST-E; TCEQ ID NUMBERS: 37308 and RN101883676; LOCATION: 914 West Kramer Road, Burkburnett, Wichita County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(5)(A)(iii), by failing to ensure that the TCEQ delivery certificate was posted at the facility and was clearly visible at all times; 30 TAC §334.8(c)(4)(A)(vii), and TWC, §26.346(a), by failing to ensure timely renewal of a TCEQ delivery certificate; 30 TAC §334.8(c)(5)(A)(i), and TWC, §26.3467(a), by failing to ensure that a valid TCEQ delivery certificate was made available before accepting delivery of a regulated substance into its USTs; 30 TAC §334.7(a)(1), by failing to register all its USTs correctly with the commission; 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the USTs; and 30 TAC §334.50(b)(2)(A)(i)(III), and TWC, §26.3475(a), by failing to conduct annual performance testing of the line leak detectors; PENALTY: \$11,100; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(8) COMPANY: Robert Wilson dba Brenham South Mobile Home Park; DOCKET NUMBER: 2004-1387-PWS-E; TCEQ ID NUMBERS: 2390047 and RN101202232; LOCATION: 300 Bilski Lane, off of State Highway 36, approximately 3.6 miles south of United States Highway 290, Brenham, Washington County, Texas; TYPE OF FACILITY: public water supply facility; RULES VIOLATED: 30 TAC §290.110(b)(4), by failing to maintain the residual disinfectant concentration within the farthest reaches of the distribution system at a minimum of 0.2 milligrams per liter (mg/L) free chlorine as required; 30 TAC §290.42(e)(5), by failing to properly seal the hypochlorination solution container to prevent the entrance of dust, insects, and other contaminants; 30 TAC §290.46(i), by failing to provide a plumbing ordinance or service agreement; 30 TAC §290.46(c)(1)(F), by failing to have the required sanitary control easement covering all property within 15 feet of the well; 30 TAC §290.46(h), by failing to have calcium hypochlorite; 30 TAC §290.46(t), by failing to post a legible sign at the water plant; 30 TAC §290.46(m), by failing to initiate a maintenance program to ensure the reliability and general appearance of all regulated facilities and reduce costly repairs due to a lack of proper maintenance; 30 TAC §290.42(m), by failing to provide each water treatment plant and all appurtenances with an intruder-resistant fence in order to protect the well and pressure tank; 30 TAC §290.46(f)(2), by failing to make water system records accessible for review at the time of the investigation; 30 TAC §290.46(m)(4), by failing to maintain the pressure tank and related piping in a watertight condition; 30 TAC §290.45(b)(1)(A)(i), by failing to provide adequate well production capacity of 1.5 gallons per minute (GPM) per connection; 30 TAC §290.45(b)(1)(A)(ii), by failing to provide adequate pressure

tank capacity of 50 gallons per connection; 30 TAC §290.42(1), by failing to provide a plant operation manual; 30 TAC §290.121(a), by failing to maintain adequate up-to-date chemical and microbiological monitoring plan; and 30 TAC §290.51(a)(3), and TWC, §5.702, by failing to pay the public health service fee for Fiscal Year 2004, for Financial Administration Account Number 92390047; PENALTY: \$2,096; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: Salim M. Jaffer dba Market Shamrock; DOCKET NUMBER: 2004-1709-PST-E; TCEQ ID NUMBERS: 66266 and RN102237336; LOCATION: 1802 West Market Street, Rockport, Aransas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance to taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of USTs; PENALTY: \$2,100; STAFF ATTORNEY: Courtney Hill, Litigation Division, MC 175, (512) 239-2436; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(10) COMPANY: Shiloh Ridge Property Owners Association; DOCKET NUMBER: 2004-0557-PWS-E; TCEQ ID NUMBERS: 1870082 and RN101215549; LOCATION: Livingston, Polk County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(ii) and (iii), and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection and two or more pumps having a total capacity of 2.0 GPM per connection; 30 TAC §290.46(r), by failing to provide a minimum pressure of 35 pounds per square inch throughout the distribution system under normal operating conditions and a minimum pressure of 20 pounds per square inch during emergencies; 30 TAC §290.46(f)(3)(A)(iv), by failing to retain for at least two years the dates that dead-end mains were flushed each month; 30 TAC §290.110(b)(4), by failing to maintain a minimum residual disinfectant concentration in the far reaches of the distribution system at a minimum of 0.2 mg/L, free chlorine or 0.5 mg/l chloramine; 30 TAC §290.46(d)(2), by failing to provide disinfection equipment capable of satisfactory operation; and 30 TAC §290.45(b)(1)(C)(iv), by failing to provide either elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection; PENALTY: \$2,468; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: The City of Gustine; DOCKET NUMBER: 2002-1324-MWD-E; TCEQ ID NUMBERS: 10841-001 and RN102178654; LOCATION: two miles east of the intersection of State Highway 36 and Farm-to-Market Road 1476, Gustine, Comanche County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121, 30 TAC §305.125(1), and TPDES Permit Number 10841-001, Final Effluent Limitations and Monitoring Requirements, by failing to comply with permitted discharge limitations; PENALTY: \$16,150; STAFF ATTORNEY: Deborah A. Bynum, Litigation Division, MC 175, (512) 239-1976; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(12) COMPANY: Toko Foko Inc. dba MSM Food Mart; DOCKET NUMBER: 2004-1785-PST-E; TCEQ ID NUMBERS: 49985 and RN102029402; LOCATION: 6013 North Farm-to-Market Road 565, Baytown, Chambers County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30

TAC §§115.246(6), 115.244(3), and 334.10(b)(1)(B), and THSC, §382.085(b), by failing to maintain a record of the results of the daily and monthly Stage II inspections conducted at the station and failing to maintain UST records pertaining to spill and overfill control records and corrosion protection records; 30 TAC §334.50(a)(1)(A) and (b)(2)(A)(i)(III), and TWC, §26.3475(c)(1), by failing to perform an annual performance test on the existing line leak detectors and by failing to provide the UST system with a method, or combination of methods, of release detection capable of detecting a release from any portion of the UST system which contains regulated substances; 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before delivery of a regulated substance into the UST; 30 TAC §334.8(c)(5)(B)(ii), by failing to ensure that the UST registration and self-certification forms were submitted to the agency in a timely manner; 30 TAC §334.8(c)(5)(C), by failing to permanently tag or label each UST fill tube at the facility with the number used to identify the tank on the registration and self-certification form filed with the commission; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control of all UST systems at a retail facility; PENALTY: \$9,000; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: USA Travel Center Inc. dba USA Travel Plaza; DOCKET NUMBER: 2005-1375-PST-E; TCEQ ID NUMBERS: 49190 and RN101789519; LOCATION: 11301 Interstate 40 East, Amarillo, Potter County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; PENALTY: \$7,350; STAFF ATTORNEY: Shana Horton, Litigation Division, MC 175, (512) 239-1088; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(14) COMPANY: YJK Inc. dba Granger Food Mart; DOCKET NUMBER: 2003-0257-PST-E; TCEQ ID NUMBERS: 0068960 and RN101375889; LOCATION: 309 South Commerce Street, Granger, Williamson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c), by failing to reconcile the inventory control records on a monthly basis; 30 TAC §334.50(a)(1)(A), and TWC, §26.3475(c), by failing to provide a method of release detection; and 30 TAC §37.815(a) and (b), by failing to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$4,800; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

TRD-200600923

Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: February 21, 2006

Notice of Water Quality Applications

The following notices were issued during the period of February 15, 2006 through February 16, 2006.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CITY OF BONHAM has applied for a renewal of TPDES Permit No. WQ0010070001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located approximately 0.5 mile east of the City of Bonham on Seven Oaks Road in Fannin County, Texas.

BRIGHT STAR-SALEM WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 14220-001, which authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 6,000 gallons per day. The facility is located 0.85 miles southwest of the intersection of State Highway 515 and State Highway 17 along County Road 1513 in Wood County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE

CITY OF THREE RIVERS has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to authorize a temporary reduction in the discharge by including an interim phase of 252,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. TCEQ received this application on November 8, 2005. The facility is located approximately 900 feet southwest of the intersection of State Highway 72 and Avenida Seguin in the City of Three Rivers in Live Oak County, Texas.

TRD-200600939

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 22, 2006



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on February 15, 2006, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Lakhani Investments, Inc. dba Alamo Food Mart; SOAH Docket No. 582-05-9442; TCEQ Docket No. 2003-1070-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Lakhani Investments, Inc. dba Alamo Food Mart on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200600940

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 22, 2006



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on February 21, 2006, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Temple Hall Silica, Inc.; SOAH Docket No. 582-06-0101; TCEQ Docket No. 2004-0709- WQ-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Temple Hall Silica, Inc. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Mungia, Office of the Chief Clerk, (512) 239-3300.

TRD-200600941

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 22, 2006



Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 3, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P. O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 3, 2006**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Angleton Danbury Hospital District dba Angleton Danbury Medical Center; DOCKET NUMBER: 2005-1775-AIR-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN100895648; LOCATION: Angleton, Brazoria County, Texas; TYPE OF FACILITY: hospital; RULE VIOLATED: 30 TAC §§113.2072(b)(3), 113.2075(a)(1), 113.2076(a)(1) and (c), 113.2077, 113.2078(a) and (b), 113.2079(a) and (c), and 122.130(b)(2), and THSC, §382.085(b), by failing to submit a federal operating permit application, by failing to install monitoring equipment, conduct initial performance testing, and maintaining adequate records for the hospital/medical/infectious waste incinerator unit, by failing to prepare a waste management plan, by failing to provide detailed operating procedures and verify training of operators, and by failing to submit a notice of intention to comply, petition for extension, or a notice of intent to shut down the incinerator; PENALTY: \$8,320; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Comtex Dairies, L.L.C.; DOCKET NUMBER: 2005-1815-AGR-E; IDENTIFIER: RN103769881; LOCATION: Comanche, Comanche County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.31(a) and §321.39(b)(3), by failing to prevent the discharge of waste from a concentrated animal feeding operation; PENALTY: \$2,260; ENFORCEMENT COORDINATOR: Anita Keese, (956) 425-6010; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(3) COMPANY: Dallas Convenience Stores, Inc. dba Mesquite Mini Mart; DOCKET NUMBER: 2005-1877-PST-E; IDENTIFIER: RN102375367; LOCATION: Mesquite, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III) and the Code, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases, by failing to monitor the piping associated with the USTs, and by failing to test the line leak detectors; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; 30 TAC §115.222(3) and §115.242(4) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system; and 30 TAC §334.50(d)(9)(A)(iv) and §334.72, by failing to notify the commission within 24 hours of a suspected release; PENALTY: \$12,000; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: E. I. Du Pont De Nemours and Company; DOCKET NUMBER: 2005-1978-AIR-E; IDENTIFIER: RN100216035; LOCATION: Nederland, Jefferson County, Texas; TYPE OF FACILITY: industrial organic chemicals; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), Permit Number 1743, and THSC, §382.085(b), by failing to maintain the allowable emission rate limits; PENALTY: \$14,520; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: Era Water Supply Corporation; DOCKET NUMBER: 2005-1940-PWS-E; IDENTIFIER: RN101438992; LOCATION: Era, Cooke County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous water service; PENALTY: \$1,070; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2005-1643-AIR-E; IDENTIFIER: RN101222602; LOCATION: Clairemont, Kent County, Texas; TYPE OF FACILITY: natural

gas processing plant; RULE VIOLATED: 30 TAC §116.115(b) and THSC, §382.085(b), by failing to obtain regulatory authority or to meet the demonstration requirements for an avoidable emissions event; PENALTY: \$4,160; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(7) COMPANY: Gardner Telecommunications, Inc.; DOCKET NUMBER: 2005-2077-WQ-E; IDENTIFIER: RN104803028; LOCATION: Carrollton, Dallas County, Texas; TYPE OF FACILITY: telecommunications company; RULE VIOLATED: the Code, §26.121(a), by failing to prevent an unauthorized discharge; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Gulbrandsen Technologies Inc.; DOCKET NUMBER: 2005-1927-IWD-E; IDENTIFIER: RN101720035; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: aluminum chloride manufacturing; RULE VIOLATED: 30 TAC §305.125(1) and (17), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 01785, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for ammonia nitrogen and aluminum and by failing to submit monitoring results for daily average total suspended solids, oil and grease, total ammonia nitrogen, total organic carbon, and dissolved aluminum; PENALTY: \$7,920; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Jack Coleman dba Hidden Valley; DOCKET NUMBER: 2005-1991-PWS-E; IDENTIFIER: RN102691714; LOCATION: Von Ormy, Bexar County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) for total trihalomethanes (TTHM); PENALTY: \$318; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: City of Hillsboro; DOCKET NUMBER: 2005-1923-PWS-E; IDENTIFIER: RN102327004; LOCATION: Hillsboro, Hill County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(h)(1)(A) and (4)(C), by failing to install backflow prevention assemblies or an air gap at all residences or establishments where an actual or potential contamination hazard exists and by failing to provide annual backflow prevention assembly test reports; 30 TAC §290.46(f)(2) and (m)(1), by failing to provide the completed customer service inspection reports, service agreement reports, or a plumbing ordinance for review during inspection, and by failing to inspect the ground and elevated storage tanks at least annually; and 30 TAC §290.43(c), by failing to provide a proper ground storage tank roof to prevent the possibility of ponding; PENALTY: \$2,080; ENFORCEMENT COORDINATOR: Amanda King-Zrubek, (512) 239-0824; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: Hood County Utilities, Inc.; DOCKET NUMBER: 2005-1844-MWD-E; IDENTIFIER: RN102957024; LOCATION: Granbury, Hood County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(4), (5), and (9)(A), and the Code, §26.121(a)(1), by failing to prevent a discharge or disposal of wastewater into waters in the state; and 30 TAC §317.2(d)(5)(E), by failing to provide dual pumps for the lift stations; PENALTY: \$15,808; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Houston Fruitland Inc.; DOCKET NUMBER: 2005-1169-PWS-E; IDENTIFIER: RN101253359; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and THSC, §341.033(d), by failing to collect and submit routine monthly bacteriological samples; 30 TAC §290.122(c)(2)(B), by failing to post a public notice indicating the failure to collect and submit the monthly required samples; PENALTY: \$2,745; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: Hubert-Watson Subdivision Water Supply, Inc.; DOCKET NUMBER: 2005-2051-PWS-E; IDENTIFIER: RN101455384; LOCATION: Matagorda, Matagorda County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the MCL for TTHM; PENALTY: \$323; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Loadcraft Industries, Limited; DOCKET NUMBER: 2005-1995-MLM-E; IDENTIFIER: RN101620748; LOCATION: Brady, McCulloch County, Texas; TYPE OF FACILITY: oil well drilling rig and trailer manufacturing; RULE VIOLATED: 30 TAC §324.1 and §335.69(d)(2) and 40 Code of Federal Regulations (CFR) §262.34(c)(1)(ii) and §279.22(c)(1), by failing to label a used oil and hazardous waste container with a label identifying the contents; 30 TAC §335.69(d)(1) and §335.262(c)(1) and (2)(A) and 40 CFR §262.34(c)(1)(i), 265.173(a), and 273.15(c)(2), by failing to properly mark or label each universal waste container with the date the waste became a waste or was received and by failing to ensure that containers holding hazardous and universal waste are always closed during storage, except when it is necessary to add or remove waste; 30 TAC §335.9(a)(1), by failing to maintain all hazardous and industrial solid waste records; and 30 TAC §335.4, by failing to prevent the collection, handling, storage, processing, or disposal of industrial solid waste in such a manner as to cause the creation and maintenance of a nuisance and the endangerment of the public health and welfare; PENALTY: \$12,220; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(15) COMPANY: Neutze Properties, Limited dba Kwik Pantry FFP 5167; DOCKET NUMBER: 2005-1957-PST-E; IDENTIFIER: RN102353141; LOCATION: Del Rio, Val Verde County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: \$640; ENFORCEMENT COORDINATOR: Howard Willoughby, (361) 825-3100; REGIONAL OFFICE: 1403 Seymour, Suite 2, Laredo, Texas 78040-8752, (956) 791-6611.

(16) COMPANY: Oil Patch Sandblast and Paint, Limited; DOCKET NUMBER: 2005-2041-AIR-E; IDENTIFIER: RN101381663; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: sandblasting and painting; RULE VIOLATED: 30 TAC §106.144(4) and §116.110(a)(4) and THSC, §382.085(b), by failing to obtain authorization for bulk mineral handling; PENALTY: \$1,744; ENFORCEMENT COORDINATOR: Scott Barnett, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Orange County Water Control and Improvement District Number 1 Oak Lane Facility and Oak Lane Tiger Creek Facility; DOCKET NUMBER: 2005-0930-MWD-E; IDENTIFIER: RN102182755 and RN102183159; LOCATION: Vidor, Orange

County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TPDES Permit Number 10875001 and the Code, §26.121(a), by failing to prevent unauthorized discharges and floating solids; 30 TAC §§305.125(1), (5), (9), and (11)(A), 317.3(e)(5), and 317.4(a), and TPDES Permit Number 10875001, by failing to notify the commission prior to construction and use of two sludge pits, by failing to properly maintain lift stations, by failing to appropriately manage the solids inventory, by failing to properly maintain two operable rotors on the oxidation ditch, by failing to appropriately dispose of bar screenings and debris, by failing to manage solids inventory, by failing to properly maintain units of treatment, by failing to provide a staircase and walkways to allow safe access to the chlorine contact chamber, by failing to provide notification within five days of becoming aware of an unauthorized discharge at the oxidation ditch, and by failing to collect effluent samples; and 30 TAC §319.11(c) and TPDES Permit Number 10875001, by failing to maintain the effluent flow recorder; PENALTY: \$22,740; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: City of Pflugerville; DOCKET NUMBER: 2005-2043-MWD-E; IDENTIFIER: RN101611440; LOCATION: Pflugerville, Travis County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0011845002, and the Code, §26.121(a), by failing to comply with permitted effluent limitations for ammonia nitrogen; PENALTY: \$1,940; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(19) COMPANY: Seven Sanders Companies, Inc.; DOCKET NUMBER: 2005-1893-MSW-E; IDENTIFIER: RN104784137; LOCATION: Wolfforth, Lubbock County, Texas; TYPE OF FACILITY: municipal solid waste recycling; RULE VIOLATED: 30 TAC §330.5(c), by failing to dispose of municipal solid waste at an authorized facility; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Marlin Bullard, (254) 751-0335; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(20) COMPANY: The Lubrizol Corporation; DOCKET NUMBER: 2005-1020-AIR-E; IDENTIFIER: RN100221589; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: additive manufacturing; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 22046, and THSC, §382.085(b), by failing to prevent an avoidable emissions event; 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to notify the commission within 24 hours of an emissions event; and 30 TAC §290.51 and the Code, §5.702, by failing to pay outstanding fees; PENALTY: \$5,117; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Triple J & L Construction Company, Inc.; DOCKET NUMBER: 2006-0052-EAQ-E; IDENTIFIER: RN102751377; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: housing subdivision development; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to receive authorization prior to making a permanent modification to the water quality basin; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(22) COMPANY: City of West Tawakoni; DOCKET NUMBER: 2005-2022-PWS-E; IDENTIFIER: RN101423671; LOCATION: West Tawakoni, Hunt County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and THSC, §341.0315(c), by exceeding the MCL for TTHM and

haloacetic acids; PENALTY: \$1,530; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Wickson Creek Special Utility District Grimes County; DOCKET NUMBER: 2005-1954-PWS-E; IDENTIFIER: RN101278232; LOCATION: Bryan, Brazos County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the MCL for TTHM; PENALTY: \$313; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200600892

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Filed: February 21, 2006



Office of the Governor

Request for Grant Applications (RFA) for the Drug Court Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that support eligible drug court programs during the state fiscal year 2007 grant cycle.

Purpose: The purpose of the Drug Court Program is to support drug courts as defined in Chapter 469 of the *Texas Health and Safety Code*, which incorporate the following ten essential characteristics:

- (1) The integration of alcohol and other drug treatment services in the processing of cases in the judicial system;
- (2) The use of a non-adversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants;
- (3) Early identification and prompt placement of eligible participants in the program;
- (4) Access to a continuum of alcohol, drug, and other related treatment and rehabilitative services;
- (5) Monitoring of abstinence through weekly alcohol and other drug testing;
- (6) A coordinated strategy to govern program responses to participants' compliance;
- (7) Ongoing judicial interaction with program participants;
- (8) Monitoring and evaluation of program goals and effectiveness;
- (9) Continuing interdisciplinary education to promote effective program planning, implementation, and operations; and,
- (10) Development of partnerships with public agencies and community organizations.

Available Funding: State funding is authorized for these projects from amounts appropriated from the State of Texas General Revenue Fund. A minimum of \$750,000 in funding is available for fiscal year 2007 under this RFA.

Standards: Grantees must comply with the standards applicable to this funding source cited in *Texas Administrative Code*, Title 1, Part 1, Chapter 3, and the statutes, requirements, and guidelines applicable to this funding.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

- (1) admission fees or tickets to any amusement park, recreational activity or sporting event;
- (2) construction;
- (3) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and the event is not related to amusement and/or social activities in any way;
- (4) fundraising;
- (5) lobbying;
- (6) medical services;
- (7) membership dues for individuals;
- (8) promotional gifts;
- (9) proselytizing or sectarian worship;
- (10) transportation, lodging, per diem or any related costs for participants, who attend training developed or coordinated using grant funds;
- (11) vehicles or equipment for government agencies that are for general agency use;
- (12) weapons, ammunition, explosives or military vehicles; and
- (13) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (e.g., supplanting).

Eligible Applicants: Counties.

Requirements:

- (1) The presiding judge of a drug court funded under this RFA must be an active judge holding elective office or a master. Persons eligible for appointment may not be a former or retired judicial officer.
- (2) Pursuant to the *Texas Health and Safety Code* §469.006 (House Bill 1287, 77th Legislature), counties with populations of more than 550,000 are required to establish a drug court. Applicants from these counties must:
 - (a) apply to the federal government for any funds available to pay the costs of the program; and
 - (b) have at least 100 participants during the first four months of operation. Applicants who do not achieve required participation levels may have their CJD grants reduced or terminated. Failure to comply may also result in all grant payments for all CJD grant projects awarded to the county being placed on temporary hold.
- (3) Applicants may apply to use state drug court funds to provide a portion of the required cash match for federal drug court grants.

Project Period: Grant-funded projects must begin on or after September 1, 2006, and will expire on or before August 31, 2007.

Application Process: Eligible applicants can download an application kit from the Office of the Governor's web site located at <http://www.governor.state.tx.us/divisions/cjd/formsappsview>.

Preferences: Preference will be given to mandated drug courts under the *Texas Health and Safety Code*, Section 469.006.

Closing Date for Receipt of Applications: All applications must be electronically submitted to the Office of the Governor, Criminal Justice Division via email at cjdapps@governor.state.tx.us on or before May 22, 2006.

Selection Process: Applications are reviewed by CJD staff members or a group selected by the Executive Director of CJD. CJD will make all final funding decisions based on eligibility, reasonableness of the project, availability of funding, and cost-effectiveness.

Contact Person: If additional information is needed, contact Whitney Stark at whitney.stark@governor.state.tx.us or at (512) 463-1919.

TRD-200600944

David Zimmerman

Assistant General Counsel
Office of the Governor
Filed: February 22, 2006



Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Bryan	Central Texas Heart Center PA	L05960	Bryan	00	02/07/06
Houston	Diagnos Inc DBA Diagnos Pet CT Imaging	L05971	Houston	00	02/08/06
Midland	T Bob Amthor Holdings LLC	L05964	Midland	00	02/06/06
Throughout Tx	Kohutek Engineering & Testing Inc	L05967	Georgetown	00	02/07/06
Throughout Tx	LFC Inc	L05970	Houston	00	02/02/06

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Abilene	ARMC LP DBA Abilene Regional Medical Center	L02434	Abilene	76	02/08/06
Abilene	Hendrick Medical Center	L02433	Abilene	89	01/30/06
Amarillo	The Don and Sybil Harrington Cancer Center	L03053	Amarillo	37	01/31/06
Amarillo	Baptist St Anthonys Health System	L01259	Amarillo	81	02/03/06
Amarillo	The Don and Sybil Harrington Cancer Center	L03053	Amarillo	38	02/08/06
Arlington	Imaging and Medical Diagnostic Specialists PA DBA Central Imaging of Arlington	L04876	Arlington	08	02/13/06
Arlington	Metroplex Hematology Oncology Associates DBA Arlington Cancer Center	L03211	Arlington	76	02/10/06
Austin	ARA Imaging	L05862	Austin	06	02/06/06
Baytown	Baytown Cardiology Associates	L05040	Baytown	08	02/13/06
Baytown	Baytown Cardiology Associates	L05040	Baytown	07	02/07/06
Baytown	Chevron Phillips Chemical Company LP	L00962	Baytown	36	02/10/06
Beaumont	BASF Corporation	L02016	Beaumont	26	02/10/06
Beaumont	Health South Diagnostic Center of Texas LP DBA Health South Diagnostic Center of Beaumont	L03888	Beaumont	33	02/02/06
Beaumont	Advanced Cardiovascular Specialists LLP	L05512	Beaumont	06	02/14/06
Beeville	Christus Spohn Health System Corporation DBA Christus Spohn Hospital Beeville	L04510	Beeville	21	02/08/06
Big Spring	Big Spring Hospital Corporation DBA Scenic Mountain Medical Center	L00763	Big Spring	49	02/07/06
Big Spring	Alon USA LP	L04950	Big Spring	07	01/31/06
Borger	Chevron Phillips Chemical Company LP	L05181	Borger	10	01/31/06
Borger	Agrium US Inc	L02772	Borger	18	01/31/06
Carrollton	Patients Comprehensive Diagnostic & Radiation Therapy Center Inc	L05661	Carrollton	02	02/09/06
Channelview	Enpro Systems LTD	L04990	Channelview	20	02/02/06
Dallas	Pet Net Pharmaceuticals Inc	L05193	Dallas	20	02/08/06
Dallas	Animal Radiology Clinic PLLC	L03535	Dallas	21	02/01/06
Dallas	GAF Materials Corporation	L03811	Dallas	12	01/31/06

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Dallas	Presbyterian Healthcare System DBA Presbyterian Hospital of Dallas	L04288	Dallas	22	02/02/06
Dallas	Rone Engineering Services LTD	L02356	Dallas	31	02/06/06
Deer Park	Shell Oil Products US DBA Deer Park Refining Limited Partnership	L04554	Deer Park	21	02/09/06
Denton	Columbia Medical Center of Denton Subsidiary LP DBA Denton Regional Medical Center	L02764	Denton	57	02/08/06
Denton	Cor Specialty Associates of North Texas PA DBA The Denton Heart Group	L05381	Denton	01	02/07/06
Edinburg	Radiology Associates of McAllen DBA Radiology Associates - Edinburg	L04512	Edinburg	12	02/14/06
Edinburg	Doctors Hospital at Renaissance LTD DBA Doctors Hospital at Renaissance	L05761	Edinburg	10	02/08/06
Edinburg	The University of Texas Pan American	L00656	Edinburg	28	02/03/06
Edna	Jackson County Hospital District DBA Jackson Healthcare Center	L04842	Edna	09	02/06/06
El Paso	Isomedix Operations Inc DBA Steris Isomedix Services	L04268	El Paso	17	02/07/06
El Paso	Physicians Specialty Hospital of El Paso East LP DBA Physicians Hospital	L05676	El Paso	04	02/08/06
El Paso	Providence Memorial Hospital	L02353	El Paso	87	02/13/06
Fairfield	East Texas Medical Center Fairfield	L05195	Fairfield	04	02/07/06
Fort Worth	Precision Energy Services Inc	L04286	Fort Worth	60	01/26/06
Fort Worth	Harris Methodist Fort Worth	L01837	Fort Worth	100	01/31/06
Fort Worth	Fort Worth Heart PA	L05480	Fort Worth	18	02/14/06
Fort Worth	Consultants in Radiology PA	L05014	Fort Worth	18	02/10/06
Fort Worth	Cook Childrens Medical Center	L04518	Fort Worth	14	02/10/06
Granbury	Granbury Hospital Corporation DBA Lake Granbury Medical	L02903	Granbury	28	01/30/06
Grapevine	Grapevine Imaging & Pain Management LLC	L05922	Grapevine	01	02/07/06
Groves	Renaissance Hospitals Inc DBA Renaissance Hospital	L02091	Groves	28	02/03/06
Harlingen	Valley Coop Oil Mill	L02908	Harlingen	10	02/09/06
Harlingen	Cockins Kim A MD FACC Cardiac Imaging Associates	L05845	Harlingen	01	02/01/06
Houston	Spectracell Laboratories Inc	L04617	Houston	10	02/09/06
Houston	New Medical Horizons II LTD DBA Cypress Fairbanks Medical Center	L03424	Houston	28	02/13/06
Houston	Rice Nuclear Diagnostics	L05830	Houston	06	02/13/06
Houston	River Oaks Medical Center LP DBA Twelve Oaks Medical Center	L02432	Houston	46	02/10/06
Houston	Gulf Coast Cancer Center Inc DBA Gulf Coast Cancer and Diagnostic Center at Southeast Inc	L05194	Houston	07	02/03/06
Houston	Gulf Coast MRI & Diagnostic Center	L05333	Houston	06	01/30/06
Houston	Baylor College of Medicine Office of Environmental Safety	L00680	Houston	90	02/03/06
Houston	The University of Texas Health Science Center at Houston	L02774	Houston	50	02/02/06

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Cardinal Health	L01911	Houston	129	02/08/06
Houston	Houston Northwest Medical Center	L02253	Houston	66	02/07/06
Houston	Petnet Houston LLC DBA Petnet Houston LLC	L05542	Houston	08	02/03/06
Houston	Methodist Health Centers DBA Methodist Willowbrook Hospital	L05472	Houston	19	01/30/06
Houston	Health Images Texas Inc DBA Healthsouth Diagnostic Medical Center	L05005	Houston	08	02/06/06
Houston	CHCA West Houston LP DBA West Houston Medical Center	L02224	Houston	67	02/02/06
Killeen	Metroplex Hospital	L03185	Killeen	26	02/07/06
Kingsville	Christus Spohn Health System DBA Christus Spohn Hospital Kleberg	L02917	Kingsville	39	02/01/06
La Porte	Dow Chemical Company USA Houston Operations	L00510	La Porte	66	02/03/06
La Porte	E I Dupont De Nemours & Company	L00314	La Porte	80	02/02/06
Laredo	Laredo Regional Medical Center LP DBA Doctors Hospital of Laredo	L02192	Laredo	33	02/09/06
Lewisville	Cardiovascular Specialists PA	L05507	Lewisville	05	02/14/06
Lewisville	Texas Oncology PA DBA Lake Vista Cancer Center	L05526	Lewisville	10	02/06/06
Longview	Eastman Chemicals Company Texas Operations	L00301	Longview	103	02/03/06
Longview	Texas Oncology PA DBA East Texas Pet Imaging	L05489	Longview	15	02/02/06
Lubbock	Texas Tech University Health Sciences Center	L01869	Lubbock	79	02/09/06
Lubbock	Radiation Oncology of the South Plains PA DBA Lubbock Cancer Center	L05484	Lubbock	08	01/30/06
Lufkin	Piney Woods Healthcare System DBA Woodland Heights Medical Center	L01842	Lufkin	50	02/07/06
McAllen	McAllen Hospitals LP DBA McAllen Medical Center	L01713	McAllen	72	02/14/06
Mesquite	HMA Mesquite Hospitals Inc DBA Medical Center of Mesquite	L02428	Mesquite	42	02/08/06
Midland	The University of Texas System	L04648	Midland	09	02/06/06
Midlothian	TXI Operations LP	L01421	Midlothian	39	01/31/06
Nacogdoches	Stephen F Austin State University	L05191	Nacogdoches	03	02/10/06
New Braunfels	McKenna Memorial Hospital	L02429	New Braunfels	44	02/08/06
New Braunfels	New Braunfels Cardiology	L05463	New Braunfels	07	02/06/06
Odessa	Ector County Hospital District DBA Medical Center Hospital	L01223	Odessa	80	02/13/06
Paris	Essent PRMC LP DBA Paris Regional Medical Center	L03199	Paris	30	02/14/06
Paris	Turner Industries Group LLC DBA Pipe Fabrication Division Texas Operations	L05237	Paris	07	02/07/06
Pasadena	Cardiac Medical Solutions DBA Heartscan of Pasadena	L05905	Pasadena	02	02/14/06
Pasadena	Goodyear Tire & Rubber Company	L04321	Pasadena	09	02/09/06
Pasadena	Mohamed O Jeroudi MD PA	L05753	Pasadena	07	02/13/06

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Pasadena	Marathon Pipe Line LLC	L05303	Pasadena	05	02/09/06
Plano	Columbia Medical Center of Plano Subsidiary LP DBA Medical Center of Plano	L02032	Plano	79	02/09/06
Plano	North Texas Regional Cancer Center	L05357	Plano	05	01/30/06
Port Arthur	S K Rao MD PA	L05415	Port Arthur	09	02/14/06
Richardson	Siemens Maintenance Services LLC	L05660	Richardson	02	01/31/06
Richmond	Polly Ryon Hospital Authority DBA Oakbend Medical Center	L02406	Richmond	38	02/07/06
San Antonio	Medi-Physics Inc DBA GE Healthcare	L04764	San Antonio	28	02/13/06
San Antonio	VHS San Antonio Partners LP DBA Baptist Health System	L00455	San Antonio	151	02/14/06
San Antonio	CTRC Clinical Foundation	L01922	San Antonio	82	02/13/06
San Antonio	Medical and Radiation Physics Inc	L01417	San Antonio	22	02/13/06
San Antonio	Texas Cancer Clinic	L05786	San Antonio	05	02/03/06
San Antonio	Central Cardiovascular Institute of San Antonio	L04892	San Antonio	13	02/07/06
San Antonio	VHS San Antonio Imaging Partners LP DBA Baptist M&S Imaging Centers	L04506	San Antonio	50	02/02/06
San Antonio	Schnitzler Cardiovascular Consultants	L05792	San Antonio	02	02/01/06
San Marcos	Austin Heart PA DBA Austin Heart San Marcos	L05452	San Marcos	16	02/10/06
Sherman	Sherman Heart Group LLP	L05498	Sherman	04	02/13/06
Sugar Land	Sugar Land Cardiology Associates LLP	L05789	Sugar Land	02	01/27/06
Sugar Land	Texas Oncology PA DBA Texas Oncology Cancer Center Sugar Land	L05816	Sugar Land	03	01/27/06
Sulphur Springs	Hopkins County Memorial Hospital	L02904	Sulphur Springs	14	02/06/06
Texas City	Valero Refining Company	L02578	Texas City	30	02/09/06
The Woodlands	Nasser Cardiology PA	L05434	The Woodlands	05	02/14/06
The Woodlands	Memorial Hospital The Woodlands	L03772	The Woodlands	48	02/14/06
The Woodlands	Memorial Hospital The Woodlands	L03772	The Woodlands	47	02/09/06
Throughout Tx	Rentech Boiler Services Inc	L05624	Abilene	06	02/09/06
Throughout Tx	Team Cooperheat-MQS Inc DBA Cooperheat-MQS	L00087	Alvin	134	02/06/06
Throughout Tx	Texas Department of Transportation Construction Division	L00197	Austin	112	02/01/06
Throughout Tx	ExxonMobil Chemical Company	L01135	Baytown	65	02/03/06
Throughout Tx	Chappell Hill Logging Systems Inc	L05374	Chappell Hill	05	02/08/06
Throughout Tx	Star-Jet Services Inc	L02214	Corpus Christi	19	02/08/06
Throughout Tx	Enercon Services Inc	L05447	Dallas	04	02/08/06
Throughout Tx	GK Techstar LLC DBA Techstar	L05562	Deer Park	06	02/02/06
Throughout Tx	Oilfield Prolog Services Inc DBA Pro-Log	L01828	Denver City	27	02/07/06
Throughout Tx	Numed Imaging Centers Inc	L05016	Grapevine	16	02/01/06
Throughout Tx	Radiographic Specialist Inc	L02742	Houston	48	02/09/06
Throughout Tx	Weatherford US LP	L05291	Houston	10	02/02/06
Throughout Tx	QC Laboratories Inc	L04750	Houston	14	02/02/06
Throughout Tx	Petrochem Inspection Services Inc	L04460	Houston	68	02/02/06
Throughout Tx	Oceaneering International Inc	L04463	Ingleside	40	02/03/06

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Throughout Tx	Austin Bridge & Road	L04629	Irving	17	01/26/06
Throughout Tx	Gamma Surveys LLC	L05155	La Porte	11	02/10/06
Throughout Tx	Quest Trutec LP	L03913	La Porte	63	02/01/06
Throughout Tx	High Tech Testing Service Inc	L05021	Longview	55	02/06/06
Throughout Tx	American Surveys Inc	L02086	Manvel	13	02/09/06
Throughout Tx	L & G Engineering Laboratory LLC	L05647	Mercedes	03	02/03/06
Throughout Tx	Tracer-Tech Services	L05375	Midland	06	02/09/06
Throughout Tx	City of Midland Department of Development Services	L05684	Midland	02	02/07/06
Throughout Tx	Turner Specialty Services LLC	L05417	Nederland	17	02/02/06
Throughout Tx	Big State X-ray	L02693	Odessa	47	02/01/06
Throughout Tx	TC Inspection Inc	L05833	Oyster Creek	10	02/14/06
Throughout Tx	T C Inspection Inc	L05833	Oyster Creek	09	02/02/06
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	103	02/15/06
Throughout Tx	Quantum Technical Services Inc	L03731	Pasadena	25	02/03/06
Throughout Tx	Techcorr USA LLC	L05972	Pasadena	01	02/07/06
Throughout Tx	Warrington Inc	L03074	Pflugerville	26	02/13/06
Throughout Tx	Zachry Construction Corporation	L01995	San Antonio	24	02/03/06
Throughout Tx	Weaver Services Inc DBA WSI Cased Hole Specialist	L01489	Snyder	28	01/26/06
Throughout Tx	CB&I Constructors Inc	L01902	The Woodlands	67	02/07/06
Throughout Tx	Gray Wireline Service Inc	L03541	Weatherford	15	02/08/06
Trophy Club	Trophy Club Medical Center LP DBA Trophy Club Medical Center	L05827	Trophy Club	04	02/10/06
Tyler	The University of Texas Health Center at Tyler	L04117	Tyler	35	02/08/06
Victoria	Citizens Medical Center	L00283	Victoria	74	02/01/06
Wichita Falls	Jack C Askins MD	L05588	Wichita Falls	02	02/07/06

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Corpus Christi	Riverside Hospital Inc DBA Northwest Regional Hospital	L02977	Corpus Christi	37	02/10/06
Corpus Christi	Riverside Hospital Inc DBA Northwest Regional Hospital	L02977	Corpus Christi	37	02/08/06
Dallas	Cor Specialty Associates of North Texas PA DBA The Dallas Heart Group	L04694	Dallas	26	01/31/06
El Paso	El Paso Cardiology Associates PA	L05162	El Paso	05	01/31/06
Pittsburg	East Texas Medical Center Pittsburg	L03106	Pittsburg	21	02/02/06
San Antonio	Radiology Associates of San Antonio DBA Advanced Medical Imaging	L04305	San Antonio	37	02/03/06
San Antonio	Hector L Nevarez MD	L04698	San Antonio	03	02/14/06

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Integrated Diagnostic Centers of North Houston LLC DBA Integrated Diagnostic Centers	L05432	Houston	09	01/31/06
Houston	Bellaire General Hospital DBA Bellaire Medical Center	L02038	Houston	42	02/07/06
Throughout Tx	Trinity Testing Laboratories Inc	L04190	Laredo	14	02/07/06

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200600936
Cathy Campbell
General Counsel
Department of State Health Services
Filed: February 22, 2006

Texas Department of Housing and Community Affairs

Notice of Public Hearing

Multifamily Housing Revenue Bonds (The Residences at Sunset Pointe) Series 2006

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at North Crowley High School, 9100 South Hulen Street, Fort Worth, Tarrant County, Texas 76123, at 6:00 p.m. on March 23, 2006 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Sunset Pointe Housing Partnership, Ltd., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 224-unit multifamily residential rental development located approximately between the 5000 and 6000 blocks of Sycamore School Road and approximately 50 yards west of the north-west corner of Granbury Road and Sycamore School Road, Tarrant County, Texas. A physical address has not been assigned by the City of Fort Worth. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P.O. Box 13941 Austin, TX 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200600914
William Dally
Acting Executive Director
Texas Department of Housing and Community Affairs
Filed: February 21, 2006

Texas Department of Insurance

Company Licensing

Application to change the name of AXA CORPORATE SOLUTIONS INSURANCE COMPANY to AXA INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in New York, New York.

Application to change the name of THE EXPLORER INSURANCE COMPANY to EXPLORER INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in San Diego, California.

Application to change the name of USAUTO INSURANCE COMPANY, INC. to FIRST ACCEPTANCE INSURANCE COMPANY INC., a foreign fire and/or casualty company. The home office is in Nashville, Tennessee.

Application to change the name of MOBILE USA INSURANCE COMPANY to LIBERTY AMERICAN SELECT INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Pinellas Park, Florida.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the Texas Register publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200600943

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: February 22, 2006



Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application to change the name of CSC HEALTHCARE, INC. to DST HEALTH SOLUTIONS, INC., a foreign third party administrator. The home office is EL SEGUNDO, CALIFORNIA.

Application to change the name of COMPANION INFORMATION MANAGEMENT RESOURCES, INC. to CIMR, INC., a foreign third party administrator. The home office is COLUMBIA, SOUTH CAROLINA.

Application for admission to Texas of PINNACLE CLAIMS MANAGEMENT, INC., a foreign third party administrator. The home office is IRVINE, CALIFORNIA.

Application for admission to Texas of APPLICATION SOFTWARE, INC., a foreign third party administrator. The home office is COLUMBIA, MISSOURI.

Application for admission to Texas of PTRX, INC., a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200600949

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: February 22, 2006



Texas Lottery Commission

Instant Game Number 646 "Vegas Action"

1.0 Name and Style of Game.

A. The name of Instant Game No. 646 is "\$3,000,000 VEGAS ACTION". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 646 shall be \$30.00 per ticket.

1.2 Definitions in Instant Game No. 646.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$8.00, \$10.00, \$20.00, \$30.00, \$40.00, \$50.00, \$100, \$500, \$20,000, \$THR MILL, ONE DICE SYMBOL, TWO DICE SYMBOL, THREE DICE SYMBOL, FOUR DICE SYMBOL, FIVE DICE SYMBOL, SIX DICE SYMBOL, 16 SYMBOL, 17 SYMBOL, 18 SYMBOL, 19 SYMBOL, 20 SYMBOL, A CARD SYMBOL, K CARD SYMBOL, Q CARD SYMBOL, J CARD SYMBOL, 10 CARD SYMBOL, 9 CARD SYMBOL, 8 CARD SYMBOL, 7 CARD SYMBOL, 6 CARD SYMBOL, 5 CARD SYMBOL, 4 CARD SYMBOL, 3 CARD SYMBOL, and 2 CARD SYMBOL.

D. Play Symbol Caption- The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 646 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
\$1.00	ONES\$
\$2.00	TWO\$
\$3.00	THREE\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$8.00	EIGHT\$
\$10.00	TEN\$
\$20.00	TWENTY
\$30.00	THIRTY
\$40.00	FORTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$20,000	20 THOU
\$THR MILL	THR MILL
ONE DICE SYMBOL	ONE
TWO DICE SYMBOL	TWO
THREE DICE SYMBOL	THR
FOUR DICE SYMBOL	FOR
FIVE DICE SYMBOL	FIV
SIX DICE SYMBOL	SIX
16 SYMBOL	SXTN
17 SYMBOL	SVTN
18 SYMBOL	EGTN
19 SYMBOL	NITN
20 SYMBOL	TWTY

A CARD SYMBOL	ACE
K CARD SYMBOL	KNG
Q CARD SYMBOL	QUN
J CARD SYMBOL	JCK
10 CARD SYMBOL	TEN
9 CARD SYMBOL	NIN
8 CARD SYMBOL	EGT
7 CARD SYMBOL	SVN
6 CARD SYMBOL	SIX
5 CARD SYMBOL	FIV
4 CARD SYMBOL	FOR
3 CARD SYMBOL	THR
2 CARD SYMBOL	TWO

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Mid-Tier Prize - A prize of \$30.00, \$40.00, \$60.00, \$100, \$300, or \$500.

G. High-Tier Prize- A prize of \$2,000, \$20,000, or \$3,000,000.

H. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

I. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (646), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 025 within each pack. The format will be: 646-0000001-001.

J. Pack - A pack of "\$3,000,000 VEGAS ACTION" Instant Game tickets contains 25 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 025 while the other fold will show the back of ticket 001 and front of 025.

K. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

L. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "\$3,000,000 VEGAS ACTION" Instant Game No. 646 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "\$3,000,000 VEGAS ACTION" Instant Game is determined once the latex on the ticket is scratched off to expose

67 (sixty-seven) Play Symbols. In the game ROULETTE, match any of YOUR NUMBERS to either ROULETTE NUMBER, win PRIZE shown for that number. In the game DICE, if the total of any ROLL equals 7 or 11, win prize shown for that roll. In the game BLACK-JACK, if the total of any HAND is higher than the DEALER'S TOTAL, win prize shown for that hand. J, Q and K = 10, A = 11. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 67 (sixty-seven) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 67 (sixty-seven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 67 (sixty-seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 67 (sixty-seven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Game ROULETTE: No duplicate non-winning prize symbols.

C. Game ROULETTE: No duplicate non-winning Your Numbers play symbols.

D. Game ROULETTE: No duplicate Roulette Number play symbols.

E. Game ROULETTE: Non-winning prize symbols will never be the same as the winning prize symbol(s).

F. Game ROULETTE: No prize amount in a non-winning spot will correspond with the YOUR NUMBER play symbol (i.e. 5 and \$5).

G. Game DICE: No duplicate non-winning rolls in the same order.

H. Game DICE: No duplicate non-winning prize symbols.

I. Game DICE: Non-winning prize symbols will never be the same as the winning prize symbol(s).

J. Game BLACKJACK: No duplicate non-winning hands in the same order.

K. Game BLACKJACK: No duplicate non-winning prize symbols.

L. Game BLACKJACK: Non-winning prize symbols will never be the same as the winning prize symbol(s).

M. Game BLACKJACK: No hand will total less than 10.

N. Game BLACKJACK: No hand will contain two aces.

O. Game BLACKJACK: No hand will tie with the Dealer's hand.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$3,000,000 VEGAS ACTION" Instant Game prize of \$30.00, \$40.00, \$60.00, \$100, \$300, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$40.00, \$60.00, \$100, \$300, or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied; and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$3,000,000 VEGAS ACTION" Instant Game prize of \$2,000 or \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "\$3,000,000 VEGAS ACTION" Instant Game prize of \$3,000,000, the claimant must sign the winning ticket and present it at the Texas Lottery Commission Claim Center. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. The Texas Lottery shall file the appropriate income reporting form with the IRS and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "\$3,000,000 VEGAS ACTION" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "\$3,000,000 VEGAS ACTION" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "\$3,000,000 VEGAS ACTION" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, Section 466.408. Any prize not claimed within that period and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 4,080,000 tickets in the Instant Game No. 646. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 646 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$30	1,142,400	3.57
\$40	367,200	11.11
\$60	326,400	12.50
\$100	92,650	44.04
\$300	1,054	3,870.97
\$500	918	4,444.44
\$2,000	136	30,000.00
\$20,000	44	92,727.27
\$3,000,000	3	1,360,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 2.11. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 646 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 646, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200600893
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: February 21, 2006

◆ ◆ ◆
Public Utility Commission of Texas

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on February 13, 2006, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Lone Star Power & Electric for Retail Electric Provider (REP) Certification, Docket Number 32411 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 10, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32411.

TRD-200600885
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 17, 2006

◆ ◆ ◆
Notice of Application to Amend Certificated Service Area Boundaries in Cameron County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on February 13, 2006, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Title and Number: Joint Application of Magic Valley Electric Cooperative, Inc. (MVEC) and AEP Texas Central (TCC) for a Certificate of Convenience and Necessity for Service Area Boundaries within Cameron County. Docket Number 32412.

The Application: A landowner has requested service to an undeveloped area of land. Both applicants have facilities in the general area capable of providing quality delivery service. However, MVEC's existing facilities are closer to the location at which the customer desires service. TCC proposes to transfer the subject area to MVEC and relinquish the right or obligation to provide delivery service within the subject area. Both applicants are in agreement and support the application.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than March 10, 2006 by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32412.

TRD-200600887
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 17, 2006

◆ ◆ ◆
Notice of Filing to Withdraw Services from Member Services Tariff Pursuant to P.U.C. Substantive Rule §26.208

Notice is given to the public of Peoples Telephone Cooperative, Inc.'s (Peoples) application filed with the Public Utility Commission of Texas (commission) on January 19, 2006, to withdraw services from its Member Services Tariff pursuant to P.U.C. Substantive Rule §26.208.

Docket Title and Number: Application of Peoples Telephone Cooperative, Inc. to Withdraw Services; Docket Number 32310.

The Application: Upon Commission approval, Peoples will no longer offer Business 4 Party Line, Residence 2 Party Line, Residence 4 Party Line, Residence Key Trunk, Business Auto Trunk, Business ISAL Line, Outside the Base Rate Additive-Multi-Party Line Service, and Single Line with Advanced Features and Nationwide Calling Package. According to Peoples, the services are obsolete and have had no customers during the last three years. Peoples filed an affidavit attesting that there are no current subscribers to these services.

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by April 3, 2006. Requests to intervene should be mailed to the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 32310.

TRD-200600945
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 22, 2006

◆ ◆ ◆
Notice of Intent to Implement Minor Rate Changes Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of XIT Rural Telephone Cooperative, Inc.'s application filed with the Public Utility Commission of Texas (commission) on February 1, 2006, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Docket Title and Number: XIT Rural Telephone Cooperative, Inc. Notice of Intent to Implement Minor Rate Changes Pursuant to P.U.C. Substantive Rule §26.171; Docket Number 32361.

The Application: XIT Rural Telephone Cooperative, Inc. filed an application proposing to implement a minor rate reduction to the Monthly Local Exchange Access Line Rate for one-party business customers in the Texline exchange. The proposed effective date for the proposed rate change is June 1, 2006. XIT's proposed minor rate reduction will decrease XIT's regulated intrastate gross annual revenues by less than 1%.

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by Monday, May 1, 2006. Requests to intervene should be mailed to the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 32361.

TRD-200600946
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 22, 2006



Notice of Intent to Implement Minor Rate Changes Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of Brazos Telephone Cooperative, Inc.'s (Brazos) application filed with the Public Utility Commission of Texas (commission) on February 6, 2006, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Docket Title and Number: Brazos Telephone Cooperative, Inc. Notice of Intent to Implement Minor Rate Changes Pursuant to P.U.C. Substantive Rule §26.171; Docket Number 32395.

The Application: Brazos Telephone Cooperative, Inc. filed an application to implement a minor rate change to the Monthly Local Exchange Access Line rates for residence and business customers throughout its service territory. The proposed effective date for the proposed rate change is June 1, 2006. The estimated annual revenue increase recognized by Brazos is \$10,505.28 for the first year of service, which is less than 1% of Brazos' gross annual intrastate revenues. Brazos has 1,307 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by the lesser of 5% or 1,500 of the affected local service customers to which this application applies by May 1, 2006, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by Monday, May 1, 2006. Requests to intervene should be mailed to the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 32395.

TRD-200600947

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 22, 2006



Notice of Intent to Implement Minor Rate Changes Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of Brazos Telecommunications, Inc.'s (Brazos) application filed with the Public Utility Commission of Texas (commission) on February 6, 2006, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Docket Title and Number: Brazos Telecommunications, Inc. Notice of Intent to Implement Minor Rate Changes Pursuant to P.U.C. Substantive Rule §26.171; Docket Number 32396.

The Application: Brazos Telecommunications, Inc. filed an application to implement a minor rate change for One-Party Residential and Business local telephone service throughout its service territory. The proposed effective date for the proposed rate change is June 1, 2006. The estimated annual revenue increase recognized by Brazos is \$53,629.84 or less than 2% of Brazos' gross annual intrastate revenues. Brazos has 4,687 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by the lesser of 5% or 1,500 of the affected local service customers to which this application applies by May 1, 2006, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by Monday, May 1, 2006. Requests to intervene should be mailed to the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 32396.

TRD-200600948
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 22, 2006



Notice of Petition for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition on February 15, 2006, for waiver of denial by the North American Numbering Plan Administration (NANPA) Pooling Administrator (PA) of Consolidated Communications of Fort Bend Company (CCFB) request for one 1000 number block in its Katy, Texas exchange.

Docket Title and Number: Request of Consolidated Communications of Fort Bend Company (CCFB) for Waiver of NeuStar, Inc. Denial of Number Block Request. Docket Number 32419.

The Application: CCFB requested one 1000 number block in its Katy, Texas exchange to satisfy the request of Memorial Hermann Hospital.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 8, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32419.

TRD-200600886
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 17, 2006



Public Notice of Workshop on Review of Chapter 26 Substantive Rules to Conform to Senate Bill 5

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding a commission review of Chapter 26 Substantive Rules to determine modifications required to conform to SB 5, on Thursday, March 23, 2006, at 9:30 a.m. in Hearing Room Gee, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 32136, *PUC Review of Chapter 26 Substantive Rules to Conform to SB 5*, has been established for this proceeding.

On Friday, March 3, 2006, the commission staff shall make available on its website (<http://www.puc.state.tx.us/rules/rule-make/32136/32136.cfm>) and in Central Records under Project Number 32136 an agenda and materials for discussion.

Questions concerning the workshop or this notice should be referred to Rick Talbot, Commission Industry Oversight Division, (512) 936-7257. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200600954
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 22, 2006



Revised Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas on February 6, 2006, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated Sections 14.101, 39.154, and 39.158 (Vernon 1998 & Supplement 2005) (PURA).

Docket Style and Number: Application of FPL Group, Inc. and Constellation Energy Group, Inc. Pursuant to Section 39.158 of the Public Utility Regulatory Act, Docket Number 32397.

The Application: On February 6, 2006, FPL Group, Inc. (FPL) and its subsidiary, FPL Energy, LLC (FPL Energy) (collectively, FPL Group), Constellation Energy Group, Inc. (Constellation), and its subsidiary, Rio Nogales Power Project, LP (Constellation Energy) filed an application for approval of FPL's merger with a wholly-owned subsidiary of Constellation. Pursuant to the definitive Agreement and Plan of Merger (Merger Agreement), FPL will merge into a wholly-owned subsidiary of Constellation, at which time FPL will become a wholly-owned subsidiary of Constellation. Following the merger, Constellation will become the corporate parent of FPL and will remain the corporate parent

of all the subsidiaries that Constellation held prior to the merger. The combined company will be named Constellation Energy Group, Inc.

The FPL Group, Constellation and Constellation Energy are required to obtain commission approval before closing if the electricity to be offered for sale in the Electric Reliability Council of Texas (ERCOT) will exceed 1% of the total electricity for sale in ERCOT. The commission shall approve the transaction unless the commission finds that the transaction results in a violation of Section 39.154 of the Public Utility Regulatory Act. Under Section 39.154, a power generation company may not own and control more than 20% of the installed generation capacity located in, or capable of delivering electricity to ERCOT. The FPL Group and Constellation Energy Group have stated that, since the combined company will own or control 5,075.79 MW of installed generation capacity within ERCOT, this will not exceed the 20% limitation.

FPL owns and operates (or will own and operate within the next 12 months) approximately 15 power generation companies (PGCs) with a total generation capacity for 2005 and 2006 of 4,310.79 MW. Constellation Energy owns and operates Rio Nogales, a combined-cycle generating plant with 765 MW of generating capacity as reported to ERCOT in 2005. Neither company controls any additional generation capacity within ERCOT. The combined capacity is 6.25% of the total installed generation capacity in ERCOT.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 32397.

TRD-200600953
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 22, 2006



Texas Residential Construction Commission

Notice of Petition for Adoption of an Amendment to Texas Star Builder Program

The Texas Residential Construction Commission (commission) has received a petition to amend 10 TAC §303.300, which sets forth the requirements for qualification for the Texas Star Builder Program. 10 TAC §301.2 requires the commission to publish in the *Texas Register* notice of a petition for rulemaking. The current text of the rule can be viewed at www.trcc.state.tx.us by clicking on "Statutes & Rules" and opening the link entitled "Adopted Rules."

Pursuant to 10 TAC §301.2, the commission hereby notices the application for a petition to amend 10 TAC §303.300 received from Stephen A. Hester, Jr. with the Houston Center for Independent Living. A copy of the petition is available for review and copying from the commission or online at www.trcc.state.tx.us by clicking on "Statutes & Rules" and opening the link entitled "Petitions for Rulemaking."

The petition seeks to amend the rule to add a new section regarding barrier free construction practices. The proposal would require a builder, when registering with the commission, to provide a sworn statement that the applicant constructed 8% of homes built during the previous year in compliance with a list of minimum requirements relating to: exterior doors; interior doorways and hallways; reinforced bathroom

walls, tubs and showers; and maximum height restrictions for switches, boxes and thermostats.

The petition would permit a builder to apply for an exterior disability accessibility waiver if compliance is cost prohibitive (as determined by the builder or an architect).

The petition would require a builder to provide a list of Universal Design Options and cost estimations for incorporating an option as prescribed by the commission to potential homeowners 3 days prior to execution of a contract for sale. The petition would exempt a builder who has more than 20% of homes built in compliance with the minimal standards from this section.

Interested persons may send written comments regarding this petition to Cynthia de Roch, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711-3144. Comments regarding this application will be accepted for twenty-one days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed. Comments may also be submitted electronically to cynthia.deroch@trcc.state.tx.us. For comments submitted electronically, please include "303 rulemaking petition" in the subject line. Comments not submitted in accordance with this notice may not be considered.

TRD-200600822

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Filed: February 15, 2006



Notice of Petition for a New Rule Relating to Discrimination Against People with Disabilities and Prohibited Practices

The Texas Residential Construction Commission (commission) has received a petition for a new rule, which defines unlawful acts related to home sales to persons with disabilities. 10 TAC §301.2 requires the commission to publish in the *Texas Register* notice of a petition for rulemaking.

Pursuant to 10 TAC §301.2, the commission hereby notices the petition for a new rule from Stephen A. Hester, Jr. with the Houston Center for Independent Living. A copy of the petition is available for review and copying from the commission, or it can be viewed online at the agency website www.trcc.state.tx.us by clicking on "Statutes & Rules."

The petition seeks a new rule regarding discrimination against people with disabilities and prohibited practices. The proposal would prohibit a builder from discriminating against a person because of disability, listing the following as unlawful actions: refusal to sell or negotiate a home sale; different terms, conditions, privileges, services, or facilities; print of any kind indicating a preference, limitation or discrimination based on disability; misrepresenting the availability of a home; and denial of a sale to a purchaser, resident or associate based upon disability.

The petition defines discrimination to include a refusal to permit modifications needed for a disabled person to have full enjoyment of the premises and permit reasonable accommodations to allow use and enjoyment of a home.

Interested persons may send written comments regarding this petition to Cynthia de Roch, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711-3144. Comments regarding this application will be accepted for twenty-one days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed. Comments may also be submitted electronically to cynthia.deroch@trcc.state.tx.us. For com-

ments submitted electronically, please include "disabilities rule petition" in the subject line. Comments not submitted in accordance with this notice may not be considered.

TRD-200600821

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Filed: February 15, 2006



Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Fort Worth, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Fort Worth, Fort Worth Spinks Airport. TxDOT CSJ No.: 0602SPINK. Scope: Provide engineering/design services to reconstruct a portion of TW C, reconstruct a portion of entrance road, reconstruct taxiway T-3, reconstruct taxiway T-2, associated drainage improvements, install taxiway signs, and extend the existing west concrete apron to the north 300' by 250' wide.

The DBE goal is set at 8%. TxDOT Project Manager is Alan Schmidt, P.E.

To assist in your proposal preparation, the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm by selecting "Fort Worth Spinks Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be e-mailed by request or downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/avn/avn550.doc>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Five completed, unfolded copies of Form AVN-550 must be postmarked by U.S. Mail by midnight Friday, March 31, 2006. Mailing address: TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on Monday, April 3, 2006. Overnight address: TxDOT Aviation Division, 200 East Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. Monday, April 3, 2006. Hand delivery address: 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by e-mail

will not be accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

The Consultant Selection Committee (committee) will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at **www.dot.state.tx.us/business/avnconsultinfo.htm**. All firms will be notified, and the top rated firm will be contacted to begin fee negotiations. The committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following the interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager, or Alan Schmidt, P.E., Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200600878

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: February 17, 2006

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Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site: **<http://www.dot.state.tx.us>**. Click on Aviation, then click on Aviation Public Hearing. Or, contact Joyce Moulton, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-200600879

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: February 17, 2006
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How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).